

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK (BROOKLYN)

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TROOPER 1, : Case No.: 22-cv-0893
: :
Plaintiff, : Brooklyn, New York
: December 12, 2023
v. : 3:08 p.m. - 5:18 p.m.
: :
NEW YORK STATE POLICE, :
et al., :
Defendants.:
-----:

TRANSCRIPT AND STATUS CONFERENCE HEARING
BEFORE THE HONORABLE TARYN A. MERKL
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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APPEARANCES CONTINUED

For Defendant: MORVILLO, ABRAMOWITZ, GRAND, IASON
Melissa DeRosa & ANELLO P.C.
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1 THE DEPUTY CLERK: This is civil cause for
2 a status conference, Docket 22-cv-893; Trooper 1
3 versus New York State Police, et al.

4 Will the parties please state their
5 appearances for the record, starting with the
6 plaintiff.

7 MR. LICUL: Good afternoon, Your Honor.
8 Valdi Licul; Wigdor LLP, for Trooper 1.

9 MR. CRAIN: Good afternoon, Your Honor.
10 John Crain from Wigdor LLP for plaintiff, Trooper 1.

11 THE COURT: Good afternoon.

12 MS. GLAVIN: Good afternoon, Your Honor.
13 Rita Glavin of Glavin PLLC for our former governor,
14 Andrew Cuomo.

15 MS. TRZASKOMA: Good afternoon, Your Honor.
16 Theresa Trzaskoma from Sher Tremonte LLP, also on
17 behalf of Governor Cuomo.

18 THE COURT: Good afternoon.

19 MS. NOONAN: Good afternoon, Your Honor.
20 Allegra Noonan from Sher Tremonte LLP, also on
21 behalf of Governor Cuomo.

22 THE COURT: Thank you.

23 MS. FOTI: Good afternoon, Your Honor.
24 Catherine Foti from Morvillo, Abramowitz, Grand,
25 Iason & Anello, on behalf of Melissa DeRosa and

1 Richard Azzopardi.

2 MR. PALERMO: Good afternoon, Your Honor.
3 Daniel Palermo, Harris Beach PLLC, on behalf of the
4 New York State Police.

5 THE COURT: Okay. Good afternoon to
6 everybody.

7 So as everyone knows, we're here today for
8 another conference regarding discovery. And as
9 everyone already knows, the discovery process in
10 this case seems to really almost have ground to a
11 grinding halt.

12 Is that fair, Mr. Licul?

13 MR. LICUL: On the plaintiff's side, I
14 think that's fair. Just -- Your Honor, just so you
15 know, we're done. We just need the governor's
16 deposition.

17 THE COURT: Okay. Thank you.

18 Ms. Glavin?

19 MS. GLAVIN: With respect to former
20 Governor Cuomo, the area that it has not come to a
21 grinding halt is we are proceeding with some
22 depositions. So I think the last time we were here,
23 on September 26th -- I can't remember what the
24 number of depositions were that were -- that had
25 been completed. We've taken several more, and we

1 have three more lined up; two this week and another
2 one in January, former New York State troopers.

3 THE COURT: Okay.

4 MS. GLAVIN: But there are -- with respect
5 to the status of discovery, in terms of what's at a
6 grinding halt, is we don't feel in a position to
7 take Trooper 1's deposition because of some disputes
8 on that related discovery, and then, certainly,
9 discovery related to third parties, including those
10 that are specifically mentioned dozens of times
11 within Trooper 1's complaint, but as well as -- and
12 I can summarize, if Your Honor wants me to, what
13 subpoenas there's been objections to, et cetera,
14 that relate to non-parties that are central to
15 Trooper 1's personal experiences; that type of
16 thing.

17 THE COURT: So then that will be helpful
18 when we get to that point. You know, I think that
19 notwithstanding my efforts to encourage the parties
20 to try to forge a path forward, we haven't really
21 gotten the type of movement, forward momentum that I
22 think is really needed to get the discovery done in
23 this case.

24 So, as you guys know, from the order that
25 we placed in the docket scheduling today's

1 conference, the goals for today are to try to come
2 up with some sort of a schedule to complete party
3 discovery. And I do want to understand, Ms. Glavin,
4 what, you know, pieces of discovery are necessary as
5 a condition precedent to both plaintiff's deposition
6 and the governor's deposition -- former governor's
7 deposition.

8 In addition, I want to talk about a
9 framework for non-party discovery, specifically with
10 regard to the complainants. As I'm sure the parties
11 know, several of the complainants came forward with
12 a proposal as to how to stage the timing. I'd like
13 to hear your views on that with the candid
14 acknowledgment that I am inclined to delay the
15 depositions of the non-party complainants until
16 after party discovery is largely complete. But I do
17 want to hear your views on that proposal.

18 And I also hope to discuss, kind of, how to
19 better clean up the docket in this case and make
20 filings more manageable for all involved. This is
21 not an uncommon phenomenon in a hard-fought
22 discovery case, where the docket becomes almost
23 unusable in its unfriendliness in terms of figuring
24 out what relates to what. So I think we need to
25 discuss bundling motions, just, sort of, docket

1 cleanup techniques that we can all benefit from
2 going forward. But that's really footnotes for the
3 end of the conference.

4 So, in terms of party discovery, Mr. Licul,
5 your summary is, we're done, except we need to
6 depose Mr. Cuomo; is that correct?

7 MR. LICUL: That's correct, Your Honor.
8 And I think we also submitted a letter that we agree
9 with the non-parties' proposal.

10 THE COURT: Okay. And where are you with
11 regard to discovery with respect to the other
12 defendants? I know we're in this motion to dismiss
13 limbo.

14 MR. LICUL: We have deposed them.

15 THE COURT: You have deposed them.

16 MR. LICUL: We have deposed them. They
17 were deposed before --

18 THE COURT: Okay.

19 MR. LICUL: -- the district judge's order,
20 Judge DeArcy Hall's -- well, what -- decision.
21 There's no opinion yet. And so we have deposed
22 them. We've gotten the discovery we need from them.
23 So, like I said, the only thing -- barring something
24 unusual, all we need is the defendant's deposition.

25 THE COURT: Okay. And New York State

1 Police?

2 MR. LICUL: We're done with that discovery
3 as well.

4 THE COURT: Okay. All right.

5 So, Ms. Glavin, what is outstanding with
6 regard to party discovery from your point of view?

7 MS. GLAVIN: Sure. Your Honor, is it okay
8 if I sit for this portion? Because I want to follow
9 my notes. I don't mean --

10 THE COURT: Fine. Yeah. I know it's in
11 our blood to stand up, but, yes, you may sit.

12 MS. GLAVIN: Okay. So with respect to
13 party discovery, when you talk about just what we're
14 seeking from Trooper 1, I think we have -- the
15 parties have already exchanged documents. I think
16 document production is complete. And I -- and as, I
17 think, Mr. Licul and our side identifies additional
18 documents, we provide them to the other side. But I
19 think, in our view, the document productions are
20 done.

21 With respect to party discovery, on the
22 issue of Trooper 1, Your Honor may recall that her
23 deposition was initially scheduled -- I think it was
24 for August 16th. And after we took a deposition on
25 August 14th of one of the State Police troopers who

1 testified that she was very close friends with
2 Trooper 1, and in connection with that deposition,
3 on the day of her deposition and several days
4 earlier, text messages were produced.

5 THE COURT: Is this Ms. Parrotta?

6 MS. GLAVIN: Yeah, Ms. Parrotta.

7 And so because of that, our desire to get
8 phone records -- and there were also some additional
9 records that we got in July, you know, that were
10 health records -- we wanted to put off Trooper 1's
11 deposition until we could dig a little bit further.
12 We also wanted to get Ms. Parrotta's deposition
13 before we took Trooper 1's deposition.

14 In the interim --

15 THE COURT: Have you done Ms. Parrotta's
16 deposition; is that complete?

17 MS. GLAVIN: Yes.

18 THE COURT: Okay.

19 MS. GLAVIN: That was done on August 14th.

20 THE COURT: I thought so, but I wasn't sure
21 if it was done, done. Okay. Thank you.

22 MS. GLAVIN: I -- unless something else
23 comes up -- we have some other depositions coming
24 up, but we believe that that is complete.

25 What happened in the interim is a number

1 of, you know, other depositions were taken, and
2 we've gotten additional documents, including -- and
3 I think this was in a letter that we put to the
4 Court -- we got text messages between Trooper 1 and
5 another former trooper.

6 THE COURT: Is this Nevins?

7 MS. GLAVIN: Nevins. Yes, Your Honor.

8 Trooper 1 did not produce and does not
9 have, as we understand it, any of her text, you
10 know, communications going back to 2021 or 2022, and
11 that is what prompted us to issue a subpoena for
12 phone records, also phone records to Diane Parrotta.

13 But because of that, we are seeking --
14 like, for instance, we're taking Mr. Nevins'
15 deposition on Friday in Tennessee. And because of
16 that, and because we don't have those text messages,
17 we are seeking such communications from other
18 parties, from third parties. So I think as you're
19 thinking about party discovery, I think you're
20 thinking -- maybe I'm wrong. I think you're
21 thinking about Trooper 1 and what she's specifically
22 saying because there's a bunch of non-parties
23 impacted by that, which is other former state
24 troopers, which is, you know, subpoenas to phone
25 records; that type of thing. And we've made

1 additional document requests to the New York State
2 Police as things have come up.

3 THE COURT: Okay.

4 MS. GLAVIN: So those are all hanging out
5 there. But also what's hanging out there -- it is
6 critically important to us before Trooper 1's
7 deposition to have the motion resolved with respect
8 to the interview memos that the Attorney General's
9 Office has.

10 From the privilege log that Your Honor
11 received a couple weeks ago, there were 28 troopers
12 that were interviewed for which there are interview
13 memos and, in particular, Trooper 1 herself. As we
14 have seen -- I think Your Honor might remember,
15 we've seen some interview memos, but those were
16 solely as a result of discovery that we received
17 from the Albany County District Attorney's Office.

18 What we could tell from those interview
19 memos is a number of times witnesses would be
20 interviewed initially, and it would be a much
21 lengthier interview than when -- if they came back
22 for transcribed testimony -- which only affects 41
23 people -- it was much shorter. We believe that
24 the -- Trooper 1's initial interview, which took
25 place in April of 2021, was much longer than what

1 was ultimately in her testimony. That is critical
2 for us to get her prior statement.

3 THE COURT: So I must, you know, have
4 misunderstood what the Attorney General's intentions
5 were, but I had thought that way back when they had
6 agreed to produce documents relevant to Trooper 1
7 specifically.

8 MS. GLAVIN: No, they will not produce. So
9 we sent to the Court recently -- and I can't
10 remember the date. I think it may have been
11 November 10th -- a letter. Hold on. I will have it
12 for you.

13 We sent a status update to the Court. So
14 we appeared on the 26th. The issue -- the dispute
15 with the AG's Office -- and I know, just for the
16 record, that Michael Jaffe from New York State
17 Attorney General's Office is in the courtroom today.

18 THE COURT: Okay.

19 MS. GLAVIN: After we had the conference on
20 the 26th, we met and conferred in an effort to
21 narrow what we were seeking from the Attorney
22 General's Office, and agreement could not be
23 reached. But we're seeking unredacted deposition
24 transcripts for a number of people, as well as --

25 THE COURT: The November 10th letter. I'm

1 just trying to track it down. Is that on this
2 docket or in 3044 docket?

3 MS. GLAVIN: It would -- no. It would be
4 in the OAG-AGAC docket.

5 THE COURT: The 3044? Okay.

6 I know them all off the top of my head.

7 MS. GLAVIN: I was about to say you're --

8 THE COURT: It's really quite disturbing.

9 All right. Okay. Ms. Simon will track it
10 down. She's working on that case.

11 Okay. Thank you.

12 You can continue.

13 MS. GLAVIN: Actually, we -- with respect
14 to the Trooper 1 interview memo, Ms. Trzaskoma is
15 correcting me, so I want to make sure the record is
16 accurate here -- is we understand that her interview
17 was -- actually may have been shorter than her
18 testimony. In other words, that, in her testimony,
19 she apparently remembered more things than what she
20 had done in her initial interview, and that's very
21 important to us as to what the initial interview
22 memo was. But, again, none of us have seen it, so
23 none of us can weigh in on it.

24 THE COURT: Okay.

25 MS. GLAVIN: The issue with the dispute

1 with the Attorney General's Office, which to us is
2 critically important before taking Trooper 1's
3 deposition, is to get those interview memos. We
4 have met and conferred with the Attorney General's
5 Office, and as is reflected on the docket -- 3044, I
6 think -- as is reflected on that, we cannot come to
7 agreement. And the Attorney General's Office has
8 said to us, under no circumstances will they produce
9 the interview memos, citing sovereign immunity as
10 well as other privileges. And I don't see that
11 being resolved.

12 And just so Your Honor is aware, in the
13 Bennett versus Cuomo docket in the Southern
14 District, we also just submitted a letter teeing the
15 exact same issue up. There is no resolution. They
16 will not produce interview memos, so it will have to
17 be briefed.

18 I think I mentioned this at the conference
19 on the 26th. We also did -- because the Attorney
20 General said, look, in the sovereign immunity
21 argument, that the proper way to go is through a
22 FOIL request, so we've done that as well. Our FOIL
23 appeal was denied for any interview memos in
24 September. We expect to be filing an Article 78.

25 But also so the Court is updated on this

1 with respect to the interview memos, we had served
2 subpoenas on Cleary Gottlieb and the Vladeck firm
3 for those interview memos.

4 THE COURT: I recall.

5 MS. GLAVIN: And it is our view that
6 sovereign immunity argument disappears with respect
7 to the firms.

8 THE COURT: We talked about this last time.

9 MS. GLAVIN: I know.

10 THE COURT: I just respectfully disagree.
11 As an agent of those entities, not only are they
12 acting on behalf of those entities, they also enjoy
13 the privileges of those entities, so that's a
14 non-starter. And they're not here. We're not here
15 to argue the 3044 case.

16 MS. GLAVIN: I get that, Your Honor. I
17 just want to give you the status with respect to
18 that. Obviously, we're going to agree to disagree.
19 It hasn't been briefed, but we want to proceed on
20 all tracks in order to get those memos because we
21 think they are critical to discovery.

22 Along that same lines, with respect to the
23 interview memos, so we tried to narrow -- we tried
24 to narrow the disputes with the AG's Office. They
25 then, at the Court's direction, produced a privilege

1 log last month. On that privilege log, I think it
2 reflected they had interviewed 28 troopers; ten of
3 whom are anonymized. They just called, you know,
4 Trooper 1, 2, 3, 4, 5, 6, 7, 8, 9, 10. We need to
5 know the names of those troopers because we may or
6 may not issue them subpoenas.

7 As Your Honor may recall, there are certain
8 witnesses that are cited as witnesses to events or
9 relevant to certain events in the Attorney General's
10 report. We don't know all of their identities,
11 which is why we want a privilege log such that it
12 identifies those individuals so that we know what
13 witnesses we're talking about so that we can
14 complete that discovery.

15 THE COURT: So it is your position, is this
16 correct, that you are holding out on the Trooper 1
17 deposition because you think that these interview
18 memos and other document discovery, including the
19 phone records, are necessary to complete her
20 deposition?

21 MS. GLAVIN: Yeah. There's also another
22 issue as well. So it's interview memos. It's our
23 not having -- so the Attorney General's Office, you
24 know, interviewed 28 troopers. The identities of 18
25 were revealed in the privilege log. Ten are not.

1 We're seeking those, the names of those individuals.

2 In addition, as you -- correct telephone
3 records. And these are telephone records -- there
4 are two subpoenas that plaintiff objected to we
5 haven't been able to serve; one is for phone lines
6 related to Diane Parrotta, and the second is with
7 respect to Trooper 1. And then there's another --

8 THE COURT: And those were originally
9 briefed, I believe, in ECF 136, and then re-upped in
10 189; is that correct?

11 MS. GLAVIN: I don't have them off the top
12 of my head, the numbers, but what I can tell you is
13 there was an initial letter, and then I think we
14 followed up with a letter recently based on the
15 Nevins texts.

16 THE COURT: Yeah, I think it's 136 and 189.
17 Okay. Thank you. Go ahead.

18 MS. GLAVIN: There's another area as well
19 that I want to bring to Your Honor's attention. We
20 have done a subpoena to Trooper 1's fiancé, who is a
21 New York State Police officer -- or not New York
22 State -- New York City Police officer, as I
23 understand it, Charles Brown. We did a subpoena for
24 both documents and his deposition.

25 We had a meet and confer, and there is

1 significant disagreement about the document
2 subpoena, and we are going to be teeing that up.
3 But given that Trooper 1 has not produced -- you
4 know, we only have a handful of texts, and there
5 were a handful of texts from May 2023 to now. We
6 need the communications relating simultaneously to
7 Governor Cuomo, and we have a -- we have a dispute,
8 and so that is going to be teed up with Your Honor.
9 And we'd like to take his deposition as well before
10 Trooper 1, or maybe we're still figuring out the
11 order.

12 THE COURT: Okay. All right. So is that
13 the universe of conditions or, you know, issues
14 precedent to taking Trooper 1's deposition as you
15 understand them right now?

16 MS. GLAVIN: Yeah. Let me just take a
17 look, talk to my colleague, make sure I got it.

18 (Discussion held off the record.)

19 MS. GLAVIN: And, Your Honor, I should also
20 add that with respect to -- we actually would like
21 to take Lindsey Boylan and Charlotte Bennett's
22 deposition as well before Trooper 1.

23 With respect to Ms. Boylan, from her
24 testimony, what we -- we also learned things during
25 discovery, but from her testimony with the Attorney

1 General's Office, Ms. Boylan talks about knowing
2 about someone from the PSU detail as early as
3 Februaryish of 2021, and we are very interested to
4 know about how Ms. Boylan knew about that. We are
5 aware that Ms. Boylan was in touch with members of
6 the PSU detail. We've learned that during
7 discovery. And we would like to explore that during
8 a deposition of Ms. Boylan.

9 With respect to Ms. Bennett, we also
10 understand that she had a number of interactions
11 with troopers, and we'd like to explore that as well
12 before we take Trooper 1's deposition.

13 THE COURT: Okay. So Ms. Boylan and
14 Ms. Bennett obviously have various pending issues in
15 and of themselves that I think differentiate them
16 from some of the other complainants, so it was my
17 hope, actually, to pick dates in a very short term
18 to follow up with those individuals, specifically at
19 a conference that would include their counsel.

20 So the dates we're looking at for that, Ms.
21 Green, what did we suggest might work for our
22 schedule?

23 THE DEPUTY CLERK: January 11th.

24 THE COURT: January 11th in the afternoon.
25 So if that date works for you, it is my hope that we

1 can try to address those specific individuals in the
2 afternoon of January 11th, obviously subject to
3 their counsel's availability.

4 Mr. Licul, does that work for you?

5 MR. LICUL: It does, Your Honor.

6 THE COURT: Thank you. I saw you checking
7 something.

8 MR. LICUL: I also have something to say
9 about --

10 THE COURT: Sure. Sure. Let's just try
11 to --

12 MR. LICUL: But I'll wait my -- yeah.

13 MS. GLAVIN: Okay. Yes, Your Honor, that
14 works for both of us.

15 THE COURT: Okay. Great. So the
16 afternoon. Reserve the afternoon; January 11, 2024.
17 I do want to set conferences specifically to talk
18 about Ms. Boylan and Ms. Bennett. I think that the
19 two of them are differently situated from some of
20 the other complainants that are discussed both in
21 the complaint and in the various filings.

22 So that's all very helpful context in terms
23 of your goals with regard to what you'd like to do
24 to prepare for Trooper 1's deposition.

25 Where are we on scheduling Mr. Cuomo's

1 deposition, Ms. Glavin?

2 MS. GLAVIN: So, Your Honor, here is
3 what -- we've been talking about this at length
4 because he was initially scheduled to be deposed --
5 it was in July, and then we proposed -- no. It was
6 August. And then we proposed September 27th. And
7 then we had this conference and the date went away.

8 In terms of the -- our former governor's
9 deposition, here's, you know, a couple of things on
10 this. One is we want to get -- there are document
11 subpoenas and some core depositions coming up from
12 the troopers that we want to get done, you know,
13 first, certainly before that, including the
14 deposition of Charlie Brown, as well as documents to
15 be produced by him. And I think we are going to end
16 up -- you'll be getting a dispute letter, you know,
17 having to brief or argue that before Your Honor.

18 With respect to --

19 THE COURT: That's the fiancé? This is --

20 MS. GLAVIN: That's the fiancé, yes.

21 THE COURT: Okay.

22 MS. GLAVIN: With respect to -- and then we
23 would also want to get whatever outstanding
24 documents we need, including documents for subpoenas
25 that were on hold.

1 In addition, we would also like, you know,
2 resolution on the issue of getting the interview
3 memos.

4 THE COURT: I mean, I don't think you're
5 going to have resolution on the interview memos.
6 And you know this, we've been talking about this for
7 almost a year.

8 So, you know, I've received the privilege
9 log. We've gone through it. I intend to also
10 address at a different conference where the Attorney
11 General is on square notice, sort of, how we're
12 going to handle that. And I actually am
13 anticipating ordering certain documents to be
14 reviewed in camera. So looking at you back in
15 the -- for the Attorney General's Office, but none
16 of that is what we're here today to address.

17 MS. GLAVIN: But part of this, Your Honor,
18 was what I --

19 THE COURT: I mean, it's going to go to the
20 Circuit or the Supreme Court and back before we have
21 resolution on this.

22 MS. GLAVIN: And that's -- oh, I'm aware of
23 it, Your Honor. I'm aware, which is why I would
24 like to be able to proceed with enforcement of the
25 other subpoenas in which -- the Cleary, Vladeck

1 subpoenas.

2 THE COURT: That same issue. It's the same
3 issue.

4 MS. GLAVIN: It is the same issue. I think
5 it is a --

6 THE COURT: You're picking the same fight
7 in three places. That's not a good strategy. It's
8 the same legal -- they have the same legal defenses
9 as the organization they were hired to work for.

10 MS. GLAVIN: Okay. Then with --

11 THE COURT: And it's a waste of everybody's
12 time, Ms. Glavin, with respect. Like, there is no
13 way to draw a distinction between an attorney who
14 was acting as an agent for their client and the
15 client in this regard.

16 MS. GLAVIN: Your Honor, you and I can
17 argue about this and the wasting time. I don't
18 think that it is because I actually -- I do disagree
19 with the Court because they are no longer an agent
20 for the Attorney General's Office. The contract
21 expired some time ago, so to the extent they are
22 still in possession of those documents, sovereign
23 immunity doesn't apply to them. They're private
24 parties.

25 THE COURT: It's a non-starter.

1 MS. GLAVIN: We -- you and I can agree to
2 disagree on this, but I think what may happen is
3 that it may get briefed because it's coming up in,
4 you know, Bennett versus Cuomo, and it may be
5 briefed on all fronts, but that's where we're at.

6 I wish that the Attorney General's Office
7 hadn't raised sovereign immunity. As far as I can
8 tell, this is the first time they've done it, except
9 for one other case --

10 THE COURT: The Long Island case, yeah.

11 MS. GLAVIN: -- which only happened after
12 it was raised for the first time in this case.

13 I think it's unfortunate because the memos
14 have been redacted for privilege, as we now know.
15 They've been redacted -- I -- what I saw and
16 discovered in the Albany County District Attorney's
17 Office case is the redactions were done for work
18 product, the way, you know, we see them done in
19 criminal cases. That's why I don't understand why
20 we're having the fight, you know. There's a
21 protective order. But we are where we are.

22 THE COURT: They're not here to dispute
23 your last assertion. I'm sure they take issue with
24 it.

25 MS. GLAVIN: Here's the other issue with

1 the governor's deposition: For it to go forward,
2 because we are essentially at a stop regarding the
3 other ten complainants in discovery, it would be
4 eminently unfair for the governor to have his
5 deposition taken and be asked about the other ten
6 complainants when we're not getting documents.
7 We -- very little is what we've gotten -- or
8 deposition testimony or subpoenas related to them.
9 I think Lindsey Boylan -- there's eight or nine
10 document subpoenas related to her that we haven't
11 been able to collect documents on. It's just --

12 THE COURT: No, I know.

13 MS. GLAVIN: So there's that. First,
14 there's that issue.

15 Second issue is what we have seen. So
16 Ms. DeRosa and Mr. Azzopardi were deposed. You
17 have -- you know, the complaint charges
18 discrimination, sexual harassment, hostile work
19 environment, but it also has the retaliation claim.
20 And the retaliation claim -- and it's at paragraphs
21 144 to 159.

22 The retaliation claim is essentially based
23 on behavior with respect to others. And the
24 governor, to be prepared for that, has to be -- we
25 have a number, again, asking for documents from some

1 of the others. I think he should not be able to be
2 asked about those things or the Attorney General's
3 report.

4 And what I can tell you from Ms. DeRosa and
5 Mr. Azzopardi's deposition is dozens and dozens of
6 questions were asked of them and topics coming up
7 about the Attorney General's report, about documents
8 collected, about why they believe certain people had
9 committed perjury, about why -- you know,
10 retaliation issues against certain -- alleged
11 retaliation against certain of the women.

12 And I think it is tremendously unfair when
13 we have not been able to get document discovery or
14 depositions. I mean for him to go in. I think it
15 deprives him of the ability to prepare himself and
16 to do a defense. And I'll give you one example of
17 this.

18 THE COURT: But, Ms. Glavin, why do you
19 think -- I take it from your comments, that you are
20 concerned about the complainant's suggestion that
21 they be deposed after party discovery is complete.
22 And what I would like to know is why.

23 MS. GLAVIN: Yes. Why --

24 THE COURT: Because I mean, this is not a
25 criminal case.

1 MS. GLAVIN: I get it. But here's the --

2 THE COURT: He either knows what happened
3 or he doesn't.

4 MS. GLAVIN: No, Your Honor --

5 THE COURT: It's within the scope of his
6 knowledge, and he doesn't get to tailor his
7 testimony, Ms. Glavin.

8 MS. GLAVIN: Your Honor, the governor is
9 not tailoring his testimony.

10 THE COURT: Then why does it matter when
11 he's deposed?

12 MS. GLAVIN: Let me give you -- let me give
13 you an example.

14 THE COURT: No, I'm serious.

15 MS. GLAVIN: Let me give you an example.
16 Let me give you an example.

17 With respect to Ms. Bennett, she has not
18 produced a single document in this case. Can I
19 please --

20 THE COURT: Documents are different than
21 the depositions.

22 MS. GLAVIN: Well, we would like to get the
23 document. But let me just tell you about, with
24 respect to the documents, the importance of them and
25 the complainants.

1 With respect to Ms. Bennett, she has not
2 produced a single document in this case. Friday of
3 last week, we got a -- the first document production
4 in the Bennett versus Cuomo case. It's going to be
5 on a rolling basis. What I can tell you is that in
6 that document production are critical e-mails and
7 text messages that are actually very important to
8 things that my client had remembered or refreshes
9 his recollection, and I can't explain to you how
10 critical they would be to him.

11 He is not sitting in the place where he has
12 access anymore to his full schedule from each of
13 these days; none of that. Those documents could not
14 be more helpful to him. We've already started
15 tagging the documents that are going to refresh:
16 This is what you were doing and what was happening
17 in January, when Ms. Bennett says that this
18 happened. This is the document about -- it may -- I
19 think it may even have been a PowerPoint that she
20 was there to present him. That stuff becomes really
21 critical to him.

22 I can also tell you with respect to the
23 importance of the governor needing discovery. I
24 know that plaintiff is going to rely heavily on the
25 governor's statements that he made on August 3rd of

1 2021, when the AG's report came out -- he did a
2 video statement -- and then when the governor
3 announced his resignation on August 10th of 2021.

4 The statements he made at that time, he had
5 had no discovery documents, et cetera. And, in
6 fact, his statement on August 10th, where he said
7 that he apologized. And with respect to Trooper 1,
8 I think there was a comment that, if she said it
9 happened, I believe her.

10 Based on what he's learned, and we've
11 learned in the discovery now, he has a very, very
12 different view of Trooper 1 and what her motivations
13 were and what were happening behind the scenes. And
14 had he known, for instance, about the extreme animus
15 that she had -- he did not even know that Trooper 1,
16 you know, was a complainant until the report came
17 out on August 3rd.

18 And so statements that he made that they
19 are relying on to prove their case with the benefit
20 of documents that he's never had or seen before, and
21 the testimony of certain people -- like, for
22 instance, Diane Parrotta -- become critical to his
23 ability to defend the case.

24 THE COURT: I understand that. And I also
25 understand the importance of documents to refresh

1 recollection. My question is what the order of
2 depositions means to you in terms of why there would
3 be a problem with deposing your client before
4 deposing the other complainants, provided that we
5 work on the documentary discovery first. And in
6 that regard, I do want to establish some sort of a
7 framework for reasonable scope of production with
8 regard to third-party complainants.

9 My inclination is to, you know, deny all
10 these motions to quash that are pending with regard
11 to the documentary discovery that you are seeking
12 from the complainants, but frame some sort of
13 reasonable rider that each complainant would be
14 expected to produce, and then get the party
15 depositions done once you resolve some of these
16 other issues. And then, perhaps, depending upon
17 what's still live, again, depending on actions you
18 may or may not choose to take -- you've mentioned a
19 motion to strike some of the preparatory language in
20 the complaint multiple times. We don't know whether
21 you're planning to do that. There may or may not be
22 a need to take the depositions of some of these
23 complainants.

24 So my inclination is to grant some sort of
25 a hybrid approach that was suggested by the, you

1 know, complainants with regard to the timing.
2 Because what's happening now isn't working.

3 MS. GLAVIN: I know. I couldn't agree
4 more.

5 THE COURT: So we need to get the party
6 discovery done. And I want to unstick some of these
7 document subpoenas, both with regard to the
8 third-party document subpoenas for the phone
9 records; things like that. I want to talk about the
10 dates that you're looking for. And I'm prepared to
11 make rulings on 136 and 189.

12 I also want to talk about what scope of
13 documents you're seeking from the complainants. And
14 you can go ahead and issue, you know, revised
15 subpoenas if we can come up with a revised scope.
16 But I don't see the need to take the depositions of
17 the complainants prior to Cuomo sitting for his
18 deposition.

19 MS. GLAVIN: Here's the issue, Your Honor:
20 The plaintiff -- and if you just look through the
21 first few paragraphs of that -- their complaint --
22 is relying on an overall hostile work environment,
23 not just limited to Trooper 1, but paragraph 1 and 2
24 of the complaint is a mishmash of her own
25 experiences and other people's experiences.

1 THE COURT: I'm aware. And you know, we
2 talked about this last time, sort of this penumbra
3 of a work environment, moving around with Governor
4 Cuomo.

5 MS. GLAVIN: But if plaintiff is going to
6 be making the argument that all of these third
7 parties, okay, is relevant to prove that, how is
8 Governor Cuomo to defend against what Valdi
9 thinks -- or Mr. Licul thinks is the hostile work
10 environment if he doesn't know what these ten other
11 complainants are saying? That's --

12 THE COURT: He does.

13 MS. GLAVIN: Your Honor, he doesn't.
14 That's the problem.

15 THE COURT: He largely does.

16 MS. GLAVIN: No. This is actually the
17 false part of this. Those depositions, not only are
18 they redacted so that we don't have critical witness
19 names in a number of instances, but those
20 depositions had no follow-up. I mean, one of
21 the biggest -- I mean, I was stunned during the Ana
22 Liss Jackson deposition when you followed up and
23 said, what is the basis for your knowledge for that,
24 the number of times it was just -- I -- it was
25 hearsay. It was not what it was said it was to be.

1 Those depositions were in no way, shape or form
2 telling him what all of them say with respect to any
3 type of follow-up questions --

4 THE COURT: But that's my point about how
5 he doesn't get to tailor his testimony.

6 MS. GLAVIN: He's not going to tailor his
7 testimony.

8 THE COURT: Then he can testify about what
9 he has personal knowledge about.

10 MS. GLAVIN: Your Honor, he's already on
11 the record. He already did testify.

12 THE COURT: So what's the harm of doing it
13 again? Part of the --

14 MS. GLAVIN: What's the harm of the
15 complainants doing it again?

16 Your Honor, here -- this is my view about
17 this. This is so odd to me that we have a
18 complaint. Lindsey Boylan's name is mentioned 35
19 times. Alyssa McGrath's name is mentioned 20 times.
20 She is a fact witness with respect to Brittany
21 Commisso, who's now filed an action in Albany.

22 Why is this case being treated differently
23 than any other case? We have material witnesses
24 that the plaintiff is relying on. Why can't we take
25 their depositions? These have been pending for

1 months. Why is this case differently? Is it --

2 THE COURT: Well, I mean, there's a host of
3 reasons why this case is different.

4 MS. GLAVIN: I want to understand.

5 THE COURT: The --

6 MS. GLAVIN: Is it the subject matter?

7 THE COURT: No. It's because of all of the
8 precatory steps that you have been seeking to take,
9 despite for a year, discussions around the fact that
10 it's very unlikely that you're going to be getting
11 the Attorney General memoranda and interview memos,
12 insisting that those things happen before you can
13 proceed.

14 MS. GLAVIN: He is being -- Governor Cuomo
15 is being deprived of the same discovery tools, the
16 robust discovery tools, that --

17 THE COURT: No, he is not. He's been
18 deprived of zero discovery tools, Ms. Glavin.

19 MS. GLAVIN: Oh, absolutely.

20 THE COURT: I have not granted or denied
21 any of your motions except your motion to compel
22 the production of those documents from the Attorney
23 General and from the AJC. Exactly one -- one denial
24 of your requests.

25 MS. GLAVIN: But, Your Honor, we --

1 THE COURT: I'm asking about triage, which
2 is a different thing than saying that he's being
3 deprived of discovery tools.

4 MS. GLAVIN: He is.

5 Your Honor, there have been document
6 disputes that have been sitting for months. We have
7 not gotten any -- Lindsey Boylan got a deposition
8 notice on April 4th. It is now December, and she's
9 mentioned 35 times, in which she produced 25
10 documents.

11 THE COURT: As I said from the get-go, I do
12 think Lindsey Boylan and Charlotte Bennett are
13 differently situated than the remaining
14 complainants.

15 My question to you is, what is the problem
16 with Governor Cuomo sitting for his deposition prior
17 to deposing all of the complainants?

18 MS. GLAVIN: I would split that up. With
19 respect to Trooper 1, I think he could sit for an
20 interview, or he could sit for a deposition with
21 respect to just Trooper 1. Once we get some of the
22 documents that we've been asking for and some more
23 depositions that are trooper related that we
24 discussed.

25 Then with respect to the other

1 complainants, there are certain other complainants
2 whose depositions we would want. So I think you
3 could lop off State Entity Employee Number 2.
4 Ms. Limiatas, I think, could be lopped off as well.
5 We don't know who State Entity Employee Number 1 is,
6 and I don't think Mr. Licul knows that either.
7 We --

8 THE COURT: So there's no risk that
9 person's getting subpoenaed for the trial, right?

10 Mr. Licul, do you know who it is?

11 MR. LICUL: I don't know who it is. And if
12 we did --

13 MS. GLAVIN: Neither do we.

14 MR. LICUL: -- we would say it.

15 But I do have -- I don't know if Ms. Glavin
16 is done.

17 MS. GLAVIN: A couple more.

18 Anna Ruch, who's also mentioned in there,
19 we do her deposition afterwards. The depositions we
20 do want to take are the ones that are involved, you
21 know, in core aspects of this, which are Lindsey
22 Boylan, Charlotte Bennett, Alyssa McGrath, Brittany
23 Commisso, and Kaitlin. Those are the core. They
24 are people that worked day in and day out in the
25 chamber. They also have documents that I think are

1 material.

2 And with respect to -- and they also have
3 deposition transcripts that were redacted, and I
4 know topics discussed in the informal interview
5 memos that didn't make their way into the
6 depositions. I mean, Ms. Boylan has, you know, a
7 number of pages of her deposition redacted.

8 THE COURT: So I just want to loop back to
9 this question of whether or not you are, in fact,
10 seeking to file a motion to strike. Because part of
11 the problem here, as we discussed at the September
12 conference, is the nature of how this complaint is
13 pled. And you stated unequivocally at the September
14 conference that if the complaint were pleaded
15 differently, more narrowly, we would be in a
16 different situation entirely.

17 MS. GLAVIN: We would.

18 THE COURT: Tell me whether or not you -- I
19 mean, you've been talking about filing a motion to
20 strike for almost a year, and it has not been filed.

21 What is the plan with regard to that?

22 MS. GLAVIN: We have actually spent a lot
23 of time talking about this. I mean, as we sit here
24 right now, I think Your Honor should strike State
25 Entity Employee Number 1. Nobody knows who she is.

1 I think she should be stricken. All right?

2 With respect to the wedding guest, I think
3 Your Honor should strike the wedding guest. With
4 respect to the others -- I mean, you have the five
5 that we named and that -- we need more core
6 discovery from them. We need their depositions
7 before we feel that we are in a position to make a
8 motion to strike. I don't --

9 THE COURT: Why?

10 MS. GLAVIN: Unless Your Honor is saying
11 that she's inclined to grant it.

12 THE COURT: No. I mean, I just want to
13 know why.

14 MS. GLAVIN: Because I want to have
15 further -- you know, with respect to Ms. Boylan and
16 Ms. Bennett and Ms. McGrath and Ms. Commisso, who
17 are all worked together within the chamber, for us
18 to be able to draw out why they are differently
19 situated, we need the depositions. And the same
20 would apply for Kaitlin as well.

21 THE COURT: And when you say to show that
22 they're "differently situated," are you talking
23 about within the, sort of, rubric of the *Perry* case
24 in terms of figuring out the scope of the work
25 environment?

1 MS. GLAVIN: I think there's that. I think
2 it's, sort of, comparing their allegations much more
3 specifically and drilled down to Trooper 1's
4 allegation. But when we make the motion,
5 Your Honor, we want to be in a position to win the
6 motion.

7 THE COURT: Right. Okay.

8 All right. So in terms of the, sort of,
9 core five, we'll call them, Ms. Boylan, Ms. Bennett,
10 Ms. McGrath, Ms. Commisso and Kaitlin, those are the
11 ones that you think are critical to taking before
12 you think that you would be prepared for Mr. Cuomo
13 to sit for his deposition?

14 MS. GLAVIN: Yeah.

15 The other aspect, too, is that those are
16 also individuals, you know, that had interactions
17 with the PSU as well.

18 THE COURT: Okay. All right.

19 I'm sure Mr. Licul has many things he would
20 like to say.

21 MR. LICUL: Yeah. Thank you, Your Honor.

22 First of all, I mean, I think the law is
23 crystal clear, and they've presented not a single
24 case to suggest that there's some kind of a
25 preference in discovery. In fact, most judges will

1 do party discovery first in some cases as part of
2 their rules.

3 As far as Governor Cuomo's new complaint
4 that he's being deprived of discovery rights, that
5 could not be further from the truth. I've been
6 doing this for a couple of minutes, and I don't know
7 of any defendant who has more information about his
8 accusers than the former governor. In no case that
9 I've ever had has the defendant actually had sworn
10 testimony by each of his accusers that he has access
11 to.

12 THE COURT: Yes, but he also can't have
13 access to the preliminary precatory lead-up to those
14 interviews. And I understand the defendant's
15 frustration in that regard.

16 MR. LICUL: But if the questions are asked
17 about his personal knowledge, he doesn't need
18 somebody else to tell him what happened. If he
19 doesn't remember, he doesn't remember. I've had
20 cases where a party has been deposed and then some
21 other piece of information comes out, and we do a
22 limited deposition on that piece.

23 And just to be clear, I think Ms. Glavin
24 represented that his deposition had been scheduled
25 and then it was rescheduled. It was a little bit

1 more contentious than that. It was scheduled and
2 then they canceled it, and they've given many
3 reasons why: It would be more efficient. He needs
4 more information. But none of that carries the day.
5 He's a party and he should be deposed.

6 On the motion to strike, the motion to
7 strike what -- hasn't been made because it would be
8 frivolous. A motion to strike is not a motion to
9 dismiss, nor is it a summary judgment motion. It is
10 a motion that says that this information alleged in
11 the complaint is so scandalous or so irrelevant that
12 it should have nothing to do with the case.

13 They can't make that argument. That's why
14 you don't have discovery for a motion to strike.
15 This would be effectively a motion for summary
16 judgment through the backdoor before we have had a
17 chance to depose the governor.

18 THE COURT: I think it's more like a motion
19 in limine through the backdoor.

20 MR. LICUL: Well, perhaps. But I will say
21 that it's not a motion to strike. It's not like
22 we're accusing the governor of -- you know, of lying
23 about the COVID numbers, right? And putting that in
24 the complaint, right? And then saying, well, that's
25 part of our case, right? That might be, you know --

1 it's not part of the environment. We disagree about
2 the penumbras, or we have disputes about that, but
3 it clearly is part of the case, especially if the
4 governor is going to get up on the witness stand and
5 say, this woman misinterpreted what I said. I
6 didn't mean it this way. I didn't mean it that way.
7 I mean, that's part of his defense. It's fair game.

8 On the phone records, perhaps to take one
9 thing off the table in being productive here, we
10 have offered to give the governor the phone records,
11 the phone records that show communications between
12 Trooper 1 and Ms. Parrotta. In other words, the
13 phone records won't necessarily show the substance
14 of the texts, but they will show when the texts
15 were -- you know, when the communications occurred.
16 And we've already given some of that to them.

17 If they want that with Trooper Nevins,
18 we'll give that to them as well. And I believe we
19 did offer that. I can't remember. We've had lots
20 of meet and confers. But I think we did offer that,
21 and the answer was, no, we want all the phone
22 records. Well -- but that's really a fishing
23 expedition. They want to know communications
24 between Trooper 1 and Trooper Nevins, Ms. Parrotta.

25 THE COURT: So what is --

1 MR. LICUL: Yeah?

2 THE COURT: -- the problem with giving the
3 full phone records? Without follow-up subpoenas to
4 get the identity information for every single
5 number, what's the harm?

6 MR. LICUL: What's the harm in the full
7 phone records?

8 THE COURT: Yes.

9 MR. LICUL: Because they're phone -- the
10 phone conversations that she had with other people
11 have nothing to do with this case.

12 THE COURT: And they won't know the numbers
13 without follow-up subpoenas --

14 MR. LICUL: They might.

15 THE COURT: -- so it doesn't really matter.

16 MR. LICUL: I don't know because they
17 have -- in the past, we've gotten a subpoena that
18 says, you know, we want this person's phone records.
19 And we ask, and who is this person? And they tell
20 us who it is. I don't know how they know that
21 information. I'm not suggesting anything nefarious.
22 All I'm saying is we don't know --

23 THE COURT: But who cares? I mean, what's
24 the harm in producing the full phone records?

25 MR. LICUL: Well, no, the harm is that it's

1 a fishing expedition.

2 THE COURT: That's not a harm.

3 MR. LICUL: Yes, it is. Sure, it is.

4 THE COURT: Not really. No. It doesn't
5 intrude on her privacy necessarily. Like, give me
6 an actual harm.

7 MR. LICUL: Sure, it is. Somebody's phone
8 records may show when they spoke to their doctor,
9 when they spoke to their accountant, when they spoke
10 to their lawyer.

11 THE COURT: So what? There's no
12 evidentiary value to any of those things.

13 MR. LICUL: Well -- but, Your Honor, I
14 don't think that that's the way discovery works.
15 This -- what they -- they have to ask for material
16 that's both relevant and proportional. We are
17 offering them the information that they're seeking:
18 How many times have you communicated with Trooper
19 Neville --

20 THE COURT: Curated by you. And their
21 concern is that previously these documents were not
22 disclosed, and they did not get full text messages
23 and other documents that they think show the
24 correspondence between Ms. Parrotta and Mr. Nevins.

25 MR. LICUL: We don't have the text

1 messages.

2 THE COURT: I understand that. They want
3 the records to check how frequently they're in
4 contact.

5 MR. LICUL: Your Honor, if you're
6 suggesting that we would somehow strike relevant --

7 THE COURT: I'm not. I'm not suggesting
8 that. I'm saying they want to do an independent
9 check. People make mistakes. I've seen it before.

10 MR. LICUL: Well, Your Honor, all I can say
11 is, then, we will do the same and subpoena the
12 governor's phone records because we're -- we'd be
13 entitled to that same thing. And we've asked for
14 that, and they won't even give us his phone number,
15 even though he actually lost his phone in --

16 MS. GLAVIN: They -- you have his phone
17 number.

18 MR. LICUL: Okay. All right. I don't
19 think we --

20 THE COURT: If there is relevancy shown.
21 What I want to talk about with regard to phone
22 records is dates; because, in my view, a limited
23 date range phone record subpoena is of limited
24 invasive effect, limited prejudice. I'm asking you
25 sincerely what your argument is against that sort of

1 limited date range.

2 Have you given thought to a date range, Ms.
3 Glavin?

4 MS. GLAVIN: Yes, Your Honor.

5 THE COURT: What is your suggestion?

6 MS. GLAVIN: January -- well, actually ...

7 THE COURT: I'm just getting 136 out of my
8 binder here.

9 MS. GLAVIN: Your Honor, I think what we
10 were planning to do for the phone records is we
11 initially wanted them for December of 2020 up to the
12 present, and we had marked December 2020 because
13 that's when Ms. Boylan first made her allegations;
14 however, given the testimony of Ms. Parrotta, I
15 think that we would ask for, you know, some key
16 dates, probably, you know, the month of phone
17 records for those dates. So, for instance,
18 September 2019, I believe.

19 I don't have them off the top of my head.
20 We can tell Mr. Licul about it. But limited to
21 dates around certain events because we've had
22 testimony about who Trooper 1 was communicating with
23 when certain events took place.

24 THE COURT: And so please help me
25 understand, Mr. Licul, why this wouldn't be relevant

1 and proportional if it's limited.

2 MR. LICUL: The text -- the communications
3 between Ms. Parrotta -- which we've already turned
4 over, by the way, some phone records because they
5 did give us a date range and we turned it over.

6 I'm not disputing that communications with
7 Ms. Parrotta and even Trooper Nevins would be
8 relevant. All I'm saying is that communications
9 with everyone else are not.

10 THE COURT: I understand what you're
11 saying. I'm asking what the problem is.

12 MR. LICUL: The problem is the other phone
13 communications. They're not relevant. They haven't
14 explained why they're relevant. And if they're
15 looking for communications between Trooper 1 and
16 certain people, they should let us know that. We'll
17 take a look at the phone records. We will not
18 redact anything that's with those folks' numbers.

19 THE COURT: Ms. Glavin, why are
20 communications or records of communications with
21 Ms. Parrotta -- and I note Ms. Parrotta's relatives'
22 phone numbers -- and Mr. Nevins' insufficient?

23 MS. GLAVIN: Because we think that
24 Trooper 1 -- those are just the two we know about
25 based on documents we got back in response to our

1 subpoenas. We have other troopers that are coming
2 up. We think she was communicating with a number of
3 other troopers around her testimony, around her
4 interview with the Attorney General's Office. Based
5 on what we know today, we also think that she was in
6 touch with a reporter as well.

7 THE COURT: What relevance does that have?

8 MS. GLAVIN: Because there were articles
9 that were -- well, a couple of things. One is that
10 there were articles that were written from one news
11 outlet that seemed to have inside information about
12 things that were happening on the PSU that would be
13 in violation of the nondisclosure agreement every
14 PSU officer signs.

15 THE COURT: But what would be the relevance
16 of her communications with a reporter?

17 MS. GLAVIN: Because we think that
18 Trooper 1, based on what -- the testimony of Diane
19 Parrotta, as well as documents that we now have from
20 former Major Nevins, establish an extreme animus
21 that she had towards Governor Cuomo. And there were
22 articles as early as December of 2020 -- or
23 inquiries by the press as early as December 2020
24 that related to Trooper 1, and we want to see what
25 communication she was having at that period of time.

1 THE COURT: Mr. Licul?

2 MR. LICUL: If they want communications
3 with other troopers, then they should give us that
4 list. We'll look through the phone records for
5 that.

6 THE COURT: This is never going to end,
7 Mr. Licul. We're going to be working on the phone
8 record subpoena for three months before we get even
9 to further document requests.

10 MR. LICUL: I don't think that's right,
11 Your Honor. I actually think this will be a faster
12 way of doing it. If they give us the names, we'll
13 take a look and we'll produce what the
14 communications are. It's faster than having to
15 decide a motion regarding the phone records.

16 THE COURT: Well, the phone records, I
17 don't have to decide -- I don't even know that I
18 need this to be fully briefed. It's a relatively
19 straightforward relevancy question.

20 MS. GLAVIN: Right.

21 THE COURT: And to me, the phone records
22 seem very relevant.

23 MR. LICUL: I think --

24 THE COURT: Your objection is to the scope.

25 MR. LICUL: Right.

1 THE COURT: And so my question is why?
2 Given everything that Ms. Glavin just described, how
3 is this not proportional to the needs of the case?

4 MR. LICUL: Because what they're talking
5 about are communications between Trooper 1 and
6 certain people. And what they're asking for are all
7 of her communications for years.

8 THE COURT: Right. Because they're looking
9 into whether she has an extreme animus. So why
10 aren't they entitled to look through her phone
11 records and see if she's communicating with other
12 folks who would be supportive of that motive?

13 MR. LICUL: That's a pure fishing
14 expedition. That's not based on evidence. That's
15 a --

16 THE COURT: A fishing expedition is not a
17 legal conclusion. It is not -- that is a phrase
18 people throw around in discovery all the time, and
19 it is not a defense to discovery.

20 MR. LICUL: Well, no. Respectfully,
21 Your Honor, I think it is. I think it's --

22 THE COURT: Relevance and proportionality
23 should be your focus.

24 MR. LICUL: Right. And if what you're
25 looking for are documents relevant to a case or a

1 defense, then you ask for those. And if you can get
2 it from the party, then you do that. You don't
3 serve third parties --

4 THE COURT: I'm not going to have them ask
5 you for 20 numbers and you give them 20 versions of
6 the phone records. That's just not efficient.

7 MR. LICUL: Why -- respectfully,
8 Your Honor, I don't understand why that isn't
9 efficient and why it's more efficient --

10 THE COURT: To just get the phone records
11 unredacted? It's a lot more efficient.

12 MR. LICUL: Well -- but now, they're
13 getting information that they haven't requested.
14 And now that that's --

15 THE COURT: They requested it months ago --

16 MR. LICUL: No.

17 THE COURT: -- in ECF 136.

18 MR. LICUL: Your -- I'm sorry, Your Honor.
19 I misspoke. Not that they didn't request it, but
20 information that goes beyond the relevance argument
21 that they're making.

22 THE COURT: I don't think that every single
23 piece of information on every single document has to
24 be relevant for the document to be relevant,
25 Mr. Licul. What is your authority for that

1 proposition?

2 MR. LICUL: Well, Your Honor, I do think
3 that there are cases about phone records.

4 THE COURT: There are dozens.

5 MR. LICUL: Yes. And I do think some of
6 them say you don't get all the phone records and
7 that's really broad.

8 THE COURT: I think it really depends on
9 the factual context.

10 MR. LICUL: Right. And in a situation
11 where they're saying, we need communications between
12 these people, and we're saying, okay, we'll show
13 that to you, we'll give that to you, I think it
14 makes the subpoena overbroad. I do.

15 And I don't think this would take a lot of
16 time. I don't -- we obviously have access to the
17 phone records, and we can do this fairly quickly.
18 And I just don't -- I was simply trying to get this
19 issue off the table by offering them what they asked
20 for and what their basis was for asking for it. I
21 don't --

22 THE COURT: I understood their basis to be
23 broader, based on the supplemental filing in 189.

24 MR. LICUL: I'm not sure that that's right.
25 I think what they're saying is, somehow, because

1 people talk to each other, that they've now
2 conspired with the rest of the world to attack their
3 client.

4 THE COURT: No. I think what they're
5 saying is evidence of communications is a fertile
6 area for cross-examination to ascertain whether or
7 not people are, in fact, conspiring against their
8 client. That's my understanding of their motion and
9 has been since they filed it months ago.

10 MR. LICUL: Well, first of all, Your Honor,
11 let me just say this: Their evidence of a
12 conspiracy is evidence of not a conspiracy. What
13 they have is communications -- evidence of
14 communications from Ms. Parrotta to Trooper 1 and
15 Trooper 1 not responding. That's not evidence of a
16 conspiracy. That's evidence of a non-conspiracy.
17 Yet, they're trying --

18 THE COURT: We're not here to debate the
19 merits.

20 MR. LICUL: Well --

21 THE COURT: We're here to figure out
22 whether or not the phone records, which may include
23 some calls with people who have nothing to do with
24 this case, are relevant. And I get it, that
25 sometimes phone records have sensitive information.

1 MR. LICUL: Right.

2 THE COURT: If you actually have phone
3 numbers on there that you deem to be unduly
4 sensitive, I'd be willing to hear you on that. I'd
5 even entertain an ex parte submission on that, but
6 that's not what I'm hearing from you. All I'm
7 hearing from you is that it is a fishing expedition,
8 which is not a legal defense.

9 MR. LICUL: Well, I don't mean to get into
10 it with Your Honor about the fishing expedition.
11 All I'm saying is, when one party says, I need this
12 information because, and the other side says, okay,
13 we'll give this to you, and they say, no, no, no, we
14 want everything, that's, by definition, overbroad.
15 That -- and I don't know what else --

16 THE COURT: That's not what's happening
17 here.

18 MR. LICUL: That's exactly what's
19 happening.

20 THE COURT: They're saying we want phone
21 records for a specific period of time.

22 MR. LICUL: Right.

23 THE COURT: Which are very specific.

24 MR. LICUL: No, they're not specific.
25 They're specific as to the time, but not as to the

1 communicators, right? And that's the issue, right?

2 THE COURT: I understand the issue, and I
3 just think that the way you're parsing this is
4 overly fine.

5 MR. LICUL: Well, Your Honor, I just don't
6 see -- what's the harm? I don't see that as being
7 the test. The test is are they seeking relevant
8 information, in part --

9 THE COURT: The answer is yes.

10 MR. LICUL: Well, in part, Your Honor. In
11 part. Not entirely yes. And we're offering to give
12 it to them.

13 THE COURT: But you're not. You're not
14 offering to give them the full scope of what they
15 want.

16 MR. LICUL: Right. Because the other
17 information is not relevant.

18 THE COURT: Which we haven't actually
19 established because nobody's actually analyzed the
20 phone records number by number, which is part of the
21 problem with this entire discussion.

22 To the extent that there are phone numbers
23 on those records that you think are too sensitive or
24 too intrusive such that there's actually prejudice
25 to your client, I'm willing to entertain that, but

1 unless there is some sort of prejudice, I find these
2 phone records to be relevant. If we can get a
3 specific date range, I don't see them as
4 disproportionate to the needs of the case. So they
5 have met their burden. My question to you now is
6 whether there is some special interest that needs to
7 be protected.

8 MR. LICUL: Well, I'd have to look at
9 the -- I have to go back and look at the phone
10 records. I don't have --

11 THE COURT: Right.

12 MR. LICUL: Yeah, I don't know.

13 THE COURT: And you, I'm sure, don't have
14 recall of all of the phone numbers. Nobody could.
15 So that's, you know -- and this is the problem. We
16 can't -- every single thing in this case becomes
17 this type of litigation --

18 MR. LICUL: Well --

19 THE COURT: -- where it's -- I've made a
20 finding.

21 MR. LICUL: I understand.

22 THE COURT: These phone records are
23 relevant, provided that the date range --

24 MR. LICUL: Okay.

25 THE COURT: -- is tailored. I may well

1 also conclude that they're proportionate and need to
2 be turned over. I'm giving you the opportunity to
3 illustrate whether or not there is some reason in,
4 sort of, as a motion to quash type analysis --

5 MR. LICUL: Okay.

6 THE COURT: -- that there was some undue
7 prejudice.

8 MR. LICUL: Let us go back, Your Honor, and
9 take a look at the phone records, and we'll report
10 back to the Court.

11 THE COURT: Okay.

12 MR. LICUL: Okay?

13 THE COURT: So, Ms. Glavin, in the interim,
14 your homework on the phone records piece is to
15 figure out the dates and the specifics there. But I
16 do find, based on the briefing and the conversation
17 today and other conversations we've likely had about
18 these phone records, that they are clearly relevant
19 to the defendant's defenses and may well be
20 proportionate, provided that an appropriate date
21 range can be found.

22 And if they are, however, unduly -- if
23 production would be unduly prejudicial in some
24 fashion to the plaintiff, I will entertain some
25 redactions. But at the end of the day, we're not

1 going to have another motion every time they come up
2 with a new name. It's not going to happen, Mr.
3 Licul.

4 MR. LICUL: I wasn't suggesting that,
5 Your Honor. I was even asking -- I was even
6 suggesting that they give us the names of other
7 troopers. But I understand Your Honor's rulings and
8 Your Honor has ruled. I just ask them to give us a
9 date.

10 THE COURT: Yeah, certainly.

11 So, Ms. Glavin, how do you want to resolve
12 this narrow question?

13 MS. GLAVIN: We'll send Mr. Licul a date
14 range, although I am expecting that you're going to
15 disagree, but I hope not.

16 MR. LICUL: Well, I mean --

17 MS. GLAVIN: We'll give him a date range,
18 Your Honor, and we will report back to the Court
19 within a week.

20 THE COURT: Okay.

21 MR. LICUL: The other -- well, I'm not sure
22 that we'll have been able to go through the phone
23 records in that week.

24 THE COURT: It may depend upon how broad
25 the date range is.

1 MR. LICUL: Yeah. Yeah.

2 THE COURT: So be mindful.

3 MR. LICUL: Just one more thing,
4 Your Honor.

5 Ms. Glavin talked about the retaliation
6 claim, and I think she mischaracterized it. Our
7 retaliation claim against the governor is that after
8 Trooper 1 brought her claims engaging in protected
9 activity, he then accused her of extortion. And
10 what discovery has revealed is that after she
11 brought her claims, he sat down with Mr. Azzopardi
12 and they drafted a tweet. I guess it's no longer
13 called a tweet. It was at that time.

14 THE COURT: What is it called?

15 MR. LICUL: It's an X. I don't know
16 what -- but at the time, it was a tweet accusing her
17 of extortion. And so that is the basis for the
18 retaliation claim.

19 So I don't think that the governor has to
20 know much or have many documents about what happened
21 during that -- during that exchange. Mr. Azzopardi
22 already testified to it. He testified that there
23 were no drafts; that they worked on the draft of the
24 tweet together. It went out under Mr. Azzopardi's
25 name. I just want to clarify the scope of the

1 retaliation claim is not as broad as Ms. Glavin made
2 it out to be.

3 MS. GLAVIN: Okay. But, Mr. Licul, here's
4 the problem, you're actually wrong on that.

5 MR. LICUL: Right.

6 MS. GLAVIN: Your paragraphs of the
7 retaliation claim --

8 MR. LICUL: Yeah.

9 MS. GLAVIN: Look at paragraphs -- they are
10 144 through 159. And the complaint was filed on
11 February 17th. You are also charging activity
12 before February 17 in 2022.

13 MR. LICUL: That was as to Ms. DeRosa
14 and --

15 MS. GLAVIN: And the governor.

16 MR. LICUL: -- and talking to the
17 reporters.

18 MS. GLAVIN: No, no, no, no. Look at
19 paragraph 155, Mr. Licul.

20 MR. LICUL: Well --

21 MS. GLAVIN: You're charging other --
22 you're also charging that he enlisted his brother.

23 MR. LICUL: Not as to Trooper 1.

24 MS. GLAVIN: No, but this is all part of
25 your retaliation claim.

1 MR. LICUL: No.

2 MS. GLAVIN: The retaliation section --

3 MR. LICUL: I don't mean to get it --

4 the --

5 MS. GLAVIN: It's a very broad 15

6 paragraphs.

7 MR. LICUL: But it --

8 MS. GLAVIN: It's not one tweet. I wish it

9 were.

10 MR. LICUL: The retaliation claim is taking

11 steps -- what the legal standard is: Did he take

12 steps that could dissuade a reasonable person from

13 complaining? That's the standard for retaliation

14 under the law. Accusing someone of committing a

15 crime after they filed a complaint is the

16 retaliation that we're talking about.

17 MS. TRZASKOMA: So do you agree to strike

18 all of the other paragraphs?

19 MS. GLAVIN: I'm not striking anything.

20 MS. TRZASKOMA: Well, then, that's the

21 problem, Mr. Licul.

22 MS. FOTI: Your Honor --

23 THE COURT: I'm pulling up the complaint.

24 Believe it or not, in all my binders, I don't have

25 the amended complaint handy.

1 MS. GLAVIN: Your Honor?

2 THE COURT: Go ahead.

3 MS. GLAVIN: I have it.

4 THE COURT: Ms. Foti, is --

5 MS. FOTI: Just because I want to correct
6 the record on Mr. Azzopardi's testimony.

7 Mr. Azzopardi's testimony was that he did
8 sit with the governor to draft posts, as they call
9 it now, but it was not about their client. It was
10 not about Trooper 1. It was about the law firm. I
11 think if you look at the post, you will see it's
12 about the law firm.

13 And I don't yet know what the Judge's
14 ruling is based on in terms of what was -- why
15 Mr. Azzopardi was dismissed, but I think that's a
16 good reason for dismissal, would be that the post
17 itself, on its face, did not have to do with the
18 plaintiff.

19 THE COURT: Thank you for that, Ms. Foti.

20 And in terms of the paragraphs, Ms. Glavin,
21 that you were just --

22 MS. GLAVIN: It's 144. It starts on
23 paragraph 144, Your Honor, and goes through 159.

24 THE COURT: Mr. Licul, I mean, I'm going
25 back to a point we discussed back in September by

1 including allegations with regard to everybody who
2 is discussed at length in the Attorney General's
3 report.

4 Although your theory of the case as to
5 Trooper 1 may be narrowly tailored vis-à-vis this
6 tweet activity, Ms. Glavin is clearly correct, that
7 the retaliation section, at least the factual
8 specifications in your retaliation section, pertain
9 to significantly longer volume of activities
10 relating to everybody else.

11 Mr. Licul, by determining to include all of
12 this, it is much more lengthy than a simple one hit
13 tweet type of retaliation.

14 MR. LICUL: The adverse actions in relation
15 to Trooper 1 --

16 THE COURT: I understand the law, sir, but
17 you have paragraph upon paragraph in your complaint
18 explaining how her fears were justified because of
19 all this prior history.

20 MR. LICUL: Correct. And that is an
21 anticipation of the defendants' arguing that she did
22 not complain, an anticipation of a Faragher-Ellerth
23 defense, which is that she could not take
24 appropriate measures to complain about the
25 discrimination when it occurred, and that's what

1 that's for.

2 THE COURT: Right. But given --

3 MR. LICUL: That's --

4 THE COURT: Given the nature of the way the
5 complaint is drafted, I don't think it can be fairly
6 characterized that the discovery relevant to
7 retaliation is one tweet.

8 MR. LICUL: The discovery in relation to
9 retaliation as to the -- as to Trooper 1 is the
10 tweet. That is the adverse act.

11 THE COURT: I understand.

12 MR. LICUL: The reason she did not complain
13 was because of the culture of fear by the governor
14 and in the governor's chambers about people -- for
15 people who would complain about him, but that's not
16 the adverse act.

17 THE COURT: I understand. I get it.

18 MR. LICUL: So -- all right.

19 THE COURT: But it's --

20 MR. LICUL: I just wanted to make clear
21 because I thought that the allegation was -- or the
22 characterization was that her allegations of
23 retaliation related to other things that he --

24 THE COURT: They do. Your complaint
25 relates to a number of other things in connection

1 with how she experienced the retaliatory act.

2 MR. LICUL: The retaliatory act is the
3 tweet.

4 THE COURT: I know, but because of her
5 lens, because of her experience, to the extent she
6 knew any of this stuff, you're saying that -- I
7 mean, did she know all of this stuff before --

8 MR. LICUL: No. It's -- but it --

9 THE COURT: -- when she just chose not to
10 complain?

11 MR. LICUL: It speaks to the culture of the
12 place. And I was -- as I said, Your Honor, it
13 doesn't go to the retaliatory act against her by the
14 governor. What it does is it goes to the
15 explanation for why she did not complain --

16 THE COURT: But she didn't know any of
17 these things at the time?

18 MR. LICUL: She knew about -- I mean, they
19 could depose her. They had a chance to depose her.
20 They canceled it the day before. And they can ask
21 her about that, about the culture of the place.

22 THE COURT: I understand. But in terms of
23 the precatory allegations that lead up to the
24 tweet --

25 MR. LICUL: Right.

1 THE COURT: -- and your position that her
2 fears were justified because of all of these prior
3 acts, did she know?

4 MR. LICUL: She may have known some of
5 them. I don't know, Your Honor. But --

6 THE COURT: Fair enough. Fair enough.

7 MR. LICUL: But all I'm saying is that that
8 is the culture of the place. The Faragher-Ellerth
9 defense, at least under federal law, is an
10 affirmative defense, and they would have to prove
11 that there is a mechanism for her to complain and
12 she didn't.

13 THE COURT: Right. I don't think anybody
14 is confused about which action you're saying is the
15 basis for your retaliation claim, but I think what
16 has been confused in the conversation is how you
17 anticipate proving the culture surrounding the
18 allegedly retaliatory act. So it's all part and
19 parcel of the retaliation claim.

20 MR. LICUL: No, I agree with that.

21 THE COURT: I think it's just --

22 MR. LICUL: I just --

23 THE COURT: -- shorthand.

24 MR. LICUL: I agree with that. I just
25 wanted to clarify what the exact retaliation against

1 Trooper 1 was.

2 THE COURT: Okay. Thank you.

3 MR. LICUL: Sure.

4 THE COURT: All right. So I have a better
5 understanding of the defendant's position with
6 regard to the, sort of, order of operations, which
7 was part of what I was hoping to have an
8 understanding of.

9 In that regard, as I noted, we will set a
10 conference down for January 11th to talk about Ms.
11 Boylan, and another conference to talk about Ms.
12 Bennett, obviously, subject to their counsels'
13 availability. We will put a note on the docket
14 scheduling those conferences, including a note in
15 the separate Boylan docket.

16 So the other phone records issues,
17 Ms. Glavin, since we were just talking about phone
18 records at length, I know there are some phone
19 record subpoenas out there for other folks. What
20 other phone records are strictly pertinent to
21 Trooper 1?

22 Weren't you, at some point, seeking records
23 relating to Ms. Parrotta and some of her relatives?

24 MS. GLAVIN: Yes. Yes.

25 THE COURT: And where are you on that?

1 MS. GLAVIN: We haven't been able to serve
2 it because when we noticed it, plaintiff's counsel
3 objected and told us not to serve it.

4 THE COURT: Okay. And who all were you
5 seeking -- my recollection was that your basis for
6 that was that some of the text messages were through
7 a relative?

8 MS. GLAVIN: Yes. So, I mean,
9 Ms. Parrotta's phone line -- obviously, we want her
10 phone records because of what she testified to and
11 that she was in touch with Trooper 1 and spoke with
12 her every day simultaneously with some of these
13 actions. We want -- so that will be a broader
14 request for Ms. Parrotta's phone records.

15 With respect to her relatives -- which it's
16 her husband and, I think, her daughter. When she
17 reached out to Trooper 1, I think the sequence of
18 events is that Trooper 1's attorneys contacted
19 Ms. Parrotta. She then reached out and sent a text
20 message using her own phone to Trooper 1, asking
21 her, you know, what she wanted her to say.

22 Trooper 1 didn't respond, so then she
23 switched -- or may have blocked her. She then
24 switched and used, I think, her husband's phone to
25 do another text message, and then used her

1 daughter's phone to do another text message.

2 Because of her switching of the phones, we
3 want to see if there were communications around that
4 time period between, you know, when Ms. Parrotta was
5 subpoenaed or in the weeks thereof, so I think we're
6 looking at records in 2023.

7 THE COURT: For what period of time?

8 MS. GLAVIN: 2023 for -- I would have to
9 look. We're probably looking in -- probably April
10 2023.

11 THE COURT: What did Ms. Parrotta say at
12 her deposition in terms of how long of a period of
13 time they were having these discussions in the
14 lead-up to her deposition?

15 MS. GLAVIN: Oh. She -- well, she
16 initially said she had not had any communications
17 with Trooper 1, and then she reversed that after
18 being confronted with the texts, so -- which is why
19 we want to see what the phone records are when she
20 was contacted by plaintiff's counsel about
21 potentially doing an affidavit, which never
22 materialized. So we want to see her husband's and
23 her child's for that period of time.

24 THE COURT: And just to be clear, all of
25 these records would reflect contact with Trooper 1's

1 known phone. You don't have evidence Trooper 1 was
2 using a second phone?

3 MS. GLAVIN: Not that we know of,
4 Your Honor.

5 THE COURT: Okay. So, then, what's the
6 problem with just getting Trooper 1's records?

7 MS. GLAVIN: Oh, that's true. That may
8 solve the problem. Unless -- I don't know if she
9 had another phone, but we can ask Mr. Licul about
10 it.

11 MR. LICUL: I don't know of any. And she
12 doesn't have another.

13 THE COURT: Okay. So it seems to me --

14 MS. GLAVIN: And with respect to Parrotta,
15 we do want her phone records, in particular, for a
16 longer period of time because she was in
17 communication with Nevins when this OAG
18 investigation was beginning and when sexual
19 harassment allegations first began. And we
20 understand through discovery and some other
21 information that Diane Parrotta was going around
22 calling other troopers to share their phone numbers.

23 We understand she was in contact with Major
24 Nevins, who I think we've discussed, who retired
25 from the PSU in -- I think it was may of 2017. But

1 we think it is material. A big part -- one of our
2 defenses that we think is valid and what we're
3 exploring is that Major Nevins and Diane Parrotta
4 played a core role in Trooper 1 coming forward. And
5 part of that was extreme dislike that they had for
6 Governor Cuomo, which is -- we've now seen in text
7 and e-mail exchanges and shared with Trooper 1. And
8 we want to see what Ms. Parrotta's communications
9 were during core periods of time, critical periods
10 of time in this. That's why we're seeking her phone
11 records.

12 THE COURT: Right. But how are her phone
13 records going to show you what you're looking for?

14 I mean, I assume you're doing phone work as
15 you go through it with your various witnesses, but,
16 you know, without the grand jury or administrative
17 subpoena power, quite candidly, how are you actually
18 going to be closing the loop on these phone records?
19 How is it getting you anywhere?

20 MS. GLAVIN: Oh, we -- because we will --
21 we have a number of other people's phone numbers and
22 that we're interested, very much interested, if she
23 was in touch with them, including newspaper
24 reporters.

25 THE COURT: This is Ms. Parrotta?

1 MS. GLAVIN: Yes.

2 THE COURT: Mr. Licul?

3 MR. LICUL: Well, I do -- don't think that
4 there's any reason for Ms. Parrotta's phone records.
5 I mean, we're -- we are -- we really don't
6 understand how any of this is relevant, frankly. We
7 are talking about somebody that -- that the --
8 Trooper 1 refused to call back regarding testimony.
9 And now, we have a conspiracy with other troopers
10 that somehow involves the AG's Office and other -- I
11 mean, this is really going down that rabbit hole.
12 And I don't see why any of this -- how any of this
13 is relevant to what's happening here.

14 What they're doing here is essentially
15 trying to put the Attorney General's report --
16 trying to -- you know, to litigate.

17 THE COURT: Of course they are, because
18 they're trying to gather discovery so that they can
19 move to preclude it.

20 MR. LICUL: Right. But there is --

21 THE COURT: Which they're entitled to do.

22 MR. LICUL: There is a -- I mean, right,
23 but just -- Your Honor, just so I may -- they've
24 sent out 23 deposition notices. Under the rules,
25 they're limited to ten.

1 THE COURT: I know.

2 MR. LICUL: They've sent out 43 -- and I
3 don't know if these are exact numbers -- document
4 subpoenas, sometimes to a person more than once.

5 This is beyond the pale. At some point in
6 civil discovery, you have to make decisions about
7 who the people are that are important, what the
8 records are that are important.

9 THE COURT: One could also say that those
10 decisions have to be made in drafting a complaint.

11 MR. LICUL: Yes. And we made those
12 decisions and we made them properly. And I will
13 stand by the complaint because the Second Circuit
14 law on this is clear.

15 THE COURT: Your read of *Perry* and my read
16 of *Perry* are slightly different, but go ahead.

17 MR. LICUL: Perhaps. But my -- but I think
18 it's -- my read of *Perry* is at least fair.

19 THE COURT: I agree, yeah.

20 MR. LICUL: Which is -- and *Cruz*, and a
21 recent Second Circuit decision by Judge Chin in
22 *Banks v. General Motors*; all of which says that the
23 harassment of others, even if the plaintiff doesn't
24 know, is relevant. And so that's -- and I think
25 that that's fair.

1 But what we're talking about here is not
2 even attacking Trooper 1's credibility. We're
3 talking about attacking another witness' credibility
4 through the use of other witnesses. We're -- I
5 think Your Honor, last time, talked about, sort of,
6 going three and four --

7 THE COURT: Degrees, yes.

8 MR. LICUL: -- degrees deep here down the
9 rabbit hole, and I think we're there.

10 THE COURT: Well, to some degree, there
11 are, sort of, areas of the case where we may be
12 there. But when it comes to the factual predication
13 that I've seen so far raising Mr. Cuomo's concerns
14 about Ms. Parrotta's communications with your client
15 and the text message exchanges, you know, to the
16 extent that they have a good-faith basis to believe
17 that people were texting and calling each other with
18 regard to what they were going to tell the AG and
19 when and how and whether or not to reach out to
20 reporters; all of that could be evidence of bias,
21 no, Mr. Licul?

22 MR. LICUL: I think that those are very
23 extreme inferences to draw. What we have with
24 respect to Ms. Parrotta is a text message that asks
25 Trooper 1 to speak, Trooper 1 not responding,

1 Ms. Parrotta then trying to call Trooper 1 on her
2 husband's phone and her daughter's phone, and
3 Trooper 1 not responding. I don't see how, then,
4 evidence of Diane Parrotta's communications with
5 other troopers is somehow going to take Trooper 1.
6 I mean, we're really down that rabbit hole.

7 MS. TRZASKOMA: Your Honor, may I be heard
8 briefly on this?

9 THE COURT: Let him finish.

10 MR. LICUL: And then there -- you know, and
11 there is testimony from another trooper that they
12 deposed, Ms. Salazar, Trooper Salazar, who confirms,
13 essentially, that as these events were occurring
14 with Trooper 1, Trooper 1 confided in her
15 contemporaneously about these events with the
16 governor.

17 And so I just -- I don't know whose -- at
18 some point, I'm losing track of whose credibility
19 we're challenging here. Is it Trooper 1's? Is it
20 Diane Parrotta's?

21 THE COURT: Well, there's several layers.

22 MR. LICUL: Yeah.

23 THE COURT: And I think that, first and
24 foremost, they want to kick out the AG report.

25 MR. LICUL: Okay.

1 THE COURT: So that would be my
2 assumption --

3 MR. LICUL: But --

4 THE COURT: -- based on everything we've
5 seen so far, right?

6 So if their goal, one of their goals is to
7 make a motion in limine saying that the Attorney
8 General's report -- I'm just spit-balling here --
9 was politically motivated, it was unsound in its
10 methodology, included, you know, legal conclusions
11 in lieu of factual findings and cannot be admitted
12 into evidence before the jury, they need to take
13 discovery to make those arguments.

14 MR. LICUL: Well, on the last point,
15 Your Honor, about legal conclusions, you don't need
16 discovery for that, right?

17 THE COURT: It's clear.

18 MR. LICUL: That's a legal conclusion.

19 I think, though, the question about the
20 803, I think it is, standard is not whether you like
21 how the report came out, but whether or not it was a
22 thorough investigation, or whether it was -- which
23 sometimes happens -- somebody complains to an agency
24 and they simply dismiss it without any further look.
25 Yeah.

1 THE COURT: Right. But there's so many
2 types of government reports, right. So you have,
3 you know, the report of the Water Board where some
4 guy goes out and measures the depth of the reservoir
5 every day, okay. Those reports are routine business
6 records almost, and those would come in pretty
7 readily. Nobody would really question whether the
8 government has an interest in knowing the depth of
9 the reservoir, right?

10 MR. LICUL: Right.

11 THE COURT: Then you have the routine
12 reports where people walk into an NYPD precinct and
13 say, this horrible thing happened to me, and it's
14 just a normal police report. Then you have reports
15 that are investigation and involve conclusions. And
16 in this report, there are multiple layers of
17 hearsay, multiple investigative choices that have
18 been made.

19 And it is clear to me, and has been clear
20 to me since the outset of all of this discovery
21 practice, that one of the main motivations of this
22 discovery is to challenge the admissibility of the
23 report. And that is something that they are
24 entitled to take discovery to do because it is
25 critical to their defense, Mr. Licul.

1 MR. LICUL: Right.

2 THE COURT: And the merits of your claim do
3 not weigh upon whether or not they can take
4 discovery to challenge the admissibility of some of
5 the evidence that you seek to introduce. Many of
6 the discovery problems in this case are due to
7 choices that plaintiff has made with regard to how
8 to plead the complaint and otherwise.

9 That's why I asked for the Rule 26(a)
10 disclosures. I've reviewed them with a fine-tooth
11 comb. Many of the issues that we're presented with
12 right now are because of choices that are being made
13 by you, as well as choices they are making.

14 MR. LICUL: Well --

15 THE COURT: And we need to live with those
16 choices and figure out a way to unstick this mess.

17 MR. LICUL: Your Honor, but the problem
18 with their attack on the report is what they're
19 trying to do is to say that the report was
20 politically motivated. That is not the test.

21 THE COURT: No, they're trying to say that
22 the complainants were unreliable.

23 MR. LICUL: Right, but that's a different
24 issue than the report.

25 THE COURT: It is part of the report.

1 MR. LICUL: No. The --

2 THE COURT: If the report is unreliable
3 because it is filled with biased hearsay, that is a
4 strong basis to argue that the introduction of that
5 report's prejudicial value outweighs its probative
6 value --

7 MR. LICUL: But it doesn't --

8 THE COURT: -- under 403.

9 MR. LICUL: It -- right. I understand the
10 403 argument, but the 803 -- I think it's 803. I'm
11 sorry. I don't remember.

12 THE COURT: 803(8).

13 MR. LICUL: 803(8). That's not it.

14 The authoritativeness of the report just
15 depends upon whether there was an investigation
16 done. And I understand Your Honor's point, which is
17 that there are various kinds of reports, but this is
18 not new ground. I mean --

19 THE COURT: It actually is somewhat new
20 ground.

21 MR. LICUL: Well --

22 THE COURT: I have read every 803(8) case I
23 can find.

24 MR. LICUL: Well --

25 THE COURT: And this is a different

1 situation than most.

2 MR. LICUL: But I don't understand why.
3 Let me just explain.

4 Every time somebody walks into this
5 courtroom, or 95 percent of the time somebody walks
6 into this courtroom with a discrimination complaint,
7 it usually has a Title VII, an ADA, an ADEA claim
8 attached to it for federal jurisdiction. And in
9 every single one of those circumstances, they've
10 gone to the EEOC, and the EEOC may have done an
11 investigation or not. Where the EEOC has done an
12 investigation, courts will allow that report to come
13 in.

14 THE COURT: Sometimes.

15 MR. LICUL: Well, where there's an actual
16 investigation; in other words, where they went out
17 and actually interviewed witnesses and did an
18 investigation. Where it's just simply a charge
19 followed by a rebuttal letter from the employer, for
20 example, or no letter at all, then the courts won't
21 let it in. That's what we're talking about here.
22 And here, we're talking about the same --

23 THE COURT: We're not talking about an EEOC
24 investigation, Mr. Licul.

25 MR. LICUL: Well, this is --

1 THE COURT: This is so, so, so different.
2 No, it is not.

3 MR. LICUL: Of course, it is. It's --

4 THE COURT: No, it is not.

5 MR. LICUL: I -- Your Honor --

6 THE COURT: You're pre-litigating the
7 motion in limine. It's really not of any real value
8 to today's proceedings.

9 MR. LICUL: Well, it is.

10 THE COURT: Please understand that they can
11 correct me if I'm wrong in terms of the theories as
12 to why they're strategizing their discovery in the
13 way that they are. But this report issue is
14 significant in terms of the breadth of discovery
15 that the Court is finding to be relevant.

16 MR. LICUL: But that's because of the
17 breadth of the governor's conduct and the number of
18 women he victimized.

19 THE COURT: Right. And if you decide you
20 don't want to introduce the report, I think we'd
21 have a very different discovery posture.

22 MR. LICUL: But I'm not going to do that
23 because it's a relevant and powerful piece of
24 evidence. Now, if they want to say that the
25 governor --

1 THE COURT: Is it, though?

2 MR. LICUL: Sure.

3 THE COURT: I mean, at the end of the day,
4 it's a report full of what people said to each
5 other. That's all that report really proves.

6 MR. LICUL: Well, no. It -- it's a report
7 based upon sworn testimony --

8 THE COURT: Yes.

9 MR. LICUL: -- which is much more than you
10 get in any other investigation where the reports are
11 actually admitted.

12 The EEOC, when it interviews folks, it
13 doesn't put them under oath. It just interviews
14 them and comes out with a conclusion. The State
15 Division of Human Rights, the New York City
16 Commission, also may not do that, right? But in
17 this case, we have folks under oath who are -- who
18 have testified in a report. We're entitled to talk
19 to them --

20 THE COURT: Their testimony is documented,
21 like, six different times. Why does it have to come
22 in through the report? What about the report is
23 important to you?

24 MR. LICUL: Because the report is a neutral
25 evaluation of what happened. It's a government

1 report of the misconduct of our governor, and one --
2 and our client is the victim of that, one of those
3 victims. It's an important piece of evidence. That
4 doesn't mean they get to go down --

5 THE COURT: What's important in the report
6 is that these witnesses are saying it. And these
7 are the same witnesses that you would have on the
8 stand. So I have many layers of questions about
9 whether or not this report would come in in its
10 form. But, again, this is like -- we're talking
11 about the motion in limine.

12 MR. LICUL: I understand. I do understand.
13 I --

14 THE COURT: But the fact that you are
15 insistent on introducing the report, which is one of
16 the questions that I asked you in September, has
17 certainly informed the Court's view as to the
18 breadth of the necessary discovery here because all
19 of the things that are relevant to challenging the
20 reliability of that report become part of his
21 defense --

22 MR. LICUL: No.

23 THE COURT: -- because they need to be able
24 to prepare to file their motion.

25 MR. LICUL: Right. But I think where we

1 have gone afield is not that the -- not that the
2 investigation wasn't thorough, but that the governor
3 wanted the agency or the attorneys to ask other
4 questions.

5 THE COURT: No, I don't think that's where
6 we are afield at all.

7 MR. LICUL: That's absolutely true. They
8 wanted to know who was talking to who behind the
9 scenes, not whether the governor stuck his hand up
10 someone's blouse.

11 THE COURT: But it matters a great deal who
12 was talking behind --

13 MS. TRZASKOMA: That is outrageous,
14 Mr. Licul.

15 MR. LICUL: So --

16 MS. GLAVIN: I actually have to be heard on
17 this because --

18 MR. LICUL: No. I'm not done yet.

19 MS. GLAVIN: No, I do, because it -- it's
20 just -- Your Honor, put aside what people said. The
21 Attorney General's investigators chose to put a
22 certain 41 people under oath, okay? In terms of the
23 documents they collected -- and I just am going to
24 beat this horse to death -- Lindsey Boylan got a
25 subpoena for all of her communications. The

1 Attorney General's Office subpoenaed her for all her
2 communications with other complainants about her
3 allegations, et cetera.

4 She produced 25 pages of documents. She
5 withheld -- withheld -- her communications with
6 other complainants. And we know that based on other
7 discovery we've gotten in the case. You know who
8 else did the same thing? We've just learned this.
9 Alyssa McGrath.

10 Alyssa McGrath, one of the complainants,
11 was given a subpoena for all of her communications
12 with other complainants. She produced certain
13 documents --

14 MR. LICUL: I'm not sure. I think you're
15 mischaracterizing subpoenas.

16 MS. GLAVIN: -- certain documents to the
17 AG's Office.

18 MR. LICUL: I don't think that --

19 MS. GLAVIN: Can I finish?

20 MR. LICUL: No, because --

21 MS. GLAVIN: Can I finish?

22 MR. LICUL: -- you interrupted me.

23 I don't think those subpoenas asked for all
24 communications with those folks.

25 MS. GLAVIN: Oh, they did. I can quote the

1 subpoenas chapter and verse.

2 THE COURT: The subpoenas by the AG's
3 Office?

4 MS. GLAVIN: Yes, subpoenas by the AG's
5 Office.

6 THE COURT: Okay. Look, I'm not here to
7 re-litigate what the subpoena --

8 MS. GLAVIN: No.

9 THE COURT: No. Listen. This is serious.
10 I don't want to hear any more about the sufficiency
11 of people's productions to the Attorney General. I
12 do not care if the Attorney General reached
13 accommodations with specific witnesses. It has no
14 relevance to this case. What matters to this Court
15 is what documents you need to prepare your defense.

16 And so, Mr. Licul, we're going to have to
17 agree to disagree with regard to the scope of
18 relevance based upon certain litigation choices that
19 the parties have made. But based on the briefing,
20 which, as you can see, I have reviewed very closely,
21 there seems to be many, many points in the discovery
22 process so far that the defendant believes bear upon
23 the reliability of the report, which, in my view,
24 goes directly to the 403 analysis and the threshold
25 question of admissibility as an 803(8) reliable

1 report.

2 So with all of that said, this is a great
3 transition to talking about the scope of discovery
4 with regard to third parties. I recognize they're
5 not here. I want to hear from the parties with
6 regard to, realistically, what types of documents
7 you are seeking from the, sort of -- I'll call them
8 the non-Boylan, non-Bennett group, with regard to
9 communications and whatnot.

10 There are very few actual subpoenas that
11 have been submitted to the Court, notwithstanding
12 all of the various motions to quash them. I don't
13 actually have a lot of them. I have some; very few.
14 So, you know, pulling a random one from the docket
15 to get a sense of the document requests. Obviously,
16 we have the ones that have been submitted to Lindsey
17 Boylan and Ms. Bennett, but I, as I noted earlier,
18 do think they are somewhat differently situated.

19 How representative is the document requests
20 that were submitted to Ms. Biaggi?

21 MS. GLAVIN: I think they're pretty
22 representative, Your Honor. And we understand from
23 speaking to Ms. Biaggi's attorney that it's --
24 whatever responsive documents they have -- I think
25 it's in the joint letter -- is "not a lot."

1 THE COURT: Okay. So as set forth in the
2 document requests that were submitted to Ms. Biaggi,
3 there's a couple of different times that the Biaggi
4 subpoena was docketed. This particular version was
5 docketed at document 193-1 as part of a letter
6 regarding that issue.

7 So this document request would include,
8 "Between December 1, 2020 and November 30, 2021, all
9 non-privileged communications with or about Lindsey
10 Boylan or any representative of Boylan, including
11 her campaign staff, agents or consultants; Karen
12 Hinton, Charlotte Bennett, or Kaitlin, concerning
13 allegations of sexual harassment or misconduct
14 against Governor Cuomo." That's document request 1.

15 Document request 2. "For the time period
16 December 1, 2020 through November 30, 2021, all
17 non-privileged documents or communications
18 concerning any allegations by you, the respondent,
19 of sexual harassment or misconduct against Governor
20 Cuomo, including communications with OAG and any
21 documents or other materials provided by you to
22 OAG."

23 And third, "For the time period January 1,
24 2017 through November 30, 2021, all non-privileged
25 communications by you concerning the work

1 environment in the New York State Executive Chamber
2 under Governor Cuomo."

3 So how representative is that, Ms. Glavin
4 or Ms. Trzaskoma?

5 MS. GLAVIN: I think with that one,
6 Your Honor, it -- it's -- I actually think it's
7 somewhat narrower. I don't -- we think it's
8 narrower because we think that Ms. Biaggi had
9 communications with a more limited number of people.

10 THE COURT: Sure. With the exception of
11 the specific names in paragraph 1, is this,
12 generally speaking, the types of documents you are
13 seeking?

14 MS. TRZASKOMA: I think those are generally
15 the types of documents. I mean, I think for others,
16 we requested, for example, what the documents were
17 that they produced to the Attorney General's Office.
18 I'm just pulling up --

19 THE COURT: You have --

20 MS. TRZASKOMA: -- Kaitlin's, for example,
21 which I think is also fairly representative.

22 THE COURT: Has that one been docketed?

23 MS. TRZASKOMA: I think that has been
24 docketed. We filed a motion to compel --

25 THE COURT: Yeah, I'm just checking my

1 list.

2 MS. TRZASKOMA: -- and that was, I believe
3 an attachment -- let me just --

4 MS. GLAVIN: It's at ECF 140.

5 THE COURT: 140? Yeah, that's what
6 I'm pulling up.

7 MS. GLAVIN: Yes. It's not fully briefed.

8 THE COURT: Right.

9 MS. TRZASKOMA: So that -- so I think that
10 would be representative. But, again, it's five
11 categories, and I can read them to you if that would
12 be helpful.

13 THE COURT: Is that 142-2?

14 MS. TRZASKOMA: I believe that's right,
15 Your Honor.

16 THE COURT: Okay. So in addition to the
17 basic categories -- so the Biaggi one is more
18 narrow, so thank you for highlighting this one.

19 All right. So looking at this one,
20 Mr. Licul, I don't know if you have it handy. Do
21 you have a view on the scope of the document
22 requests to the -- not the other complainants. I
23 recognize that your original motion to -- sort of
24 for a protective order pertained to what you
25 described as, you know, sort of, information

1 digging, looking for information that could be
2 precluded under Rule 412 with regard to sexual
3 histories.

4 Absent that category, which, you know, is a
5 separate point of discussion, do you have concerns
6 about the document request that would call for
7 communications between complainants in the executive
8 chamber, communications with media outlets,
9 communications relating to statements Governor Cuomo
10 or his representatives have made with regard to
11 sexual harassment and misconduct, communications
12 with the OAG and AGAC, including documents
13 produced -- "All documents or communications
14 concerning your personal interactions with Governor
15 Cuomo," without a time limit, seems problematic,
16 potentially, depending upon the person's tenure.

17 And paragraph 4, "Any photographs, videos,
18 screenshots or images, including the metadata of you
19 with Governor Cuomo; any communications in which you
20 shared or referred to any such images, videos or
21 photographs, including, but not limited to,
22 communications on social media" also seems fairly
23 broad in terms of timing.

24 "For the period December 5, 2020 to the
25 present, all documents or communications concerning

1 Lindsey Boylan, Charlotte Bennett, Ana Liss, or
2 Karen Hinton concerning Governor Cuomo or any
3 investigation of Governor Cuomo."

4 So do you have a reaction to those
5 categories, Mr. Licul?

6 MR. LICUL: Well, just to be clear, I'm
7 only speaking for Trooper 1 and not --

8 THE COURT: Obviously.

9 MR. LICUL: I don't mean to be object --
10 waive -- attempting to waive anybody's objections.

11 THE COURT: Obviously.

12 MR. LICUL: I don't have an objection to
13 those, other than the 412 and related issues we
14 briefed earlier, the sexual history information.

15 I would say, just if you're asking for my
16 general reaction, if the question is all
17 communications between person A and person B,
18 unmoored to anything in the complaint, I think that
19 that, as a general matter, is overly broad, but I'm
20 not sure that I have -- that, I have standing to
21 object to.

22 But as a general matter, all communications
23 between one person and another seems overly broad.
24 If it's narrowed by the allegations in the complaint
25 or something else about the investigation, I can see

1 how that would be relevant.

2 THE COURT: Well, their communications
3 piece --

4 MR. LICUL: I read that as
5 communications --

6 THE COURT: It says the communications
7 between complainants is described as concerning
8 Governor Cuomo or any investigation of Governor
9 Cuomo, and there's a time limit.

10 MR. LICUL: I suppose the "concerning
11 Governor Cuomo or the investigation" -- I think the
12 "concerning Governor Cuomo" seems somewhat broad. I
13 mean, if it's not concerning the investigation, then
14 why would it be relevant?

15 THE COURT: Because what if their one tweet
16 saying -- or one text message saying, Governor Cuomo
17 is the best, I love him so much. And then six
18 months later, after 17,000 phone calls with somebody
19 else, they're saying he's the worst, let's go get
20 him.

21 MR. LICUL: I suppose that that's right. I
22 mean, I think that that would all probably be in the
23 context of the investigation. But, again, I don't
24 have an objection. I just -- really just want the
25 documents to be produced, whatever they are, and

1 move forward.

2 THE COURT: As do I.

3 MR. LICUL: Yeah.

4 THE COURT: As do I. And so this is, kind
5 of, the other piece of what I wanted to talk about
6 today.

7 I have a very specific discovery rule that
8 requires the parties to, you know, try to meet and
9 confer as much as possible and include both sides'
10 position with respect to the dispute in a given
11 filing for a reason.

12 This is not the only case where the
13 discovery processes became the litigation and
14 derailed the productive and effective, efficient
15 transmission of information. The problem with
16 motions to compel and motions to quash is that they
17 take time. One side has to brief it, then I have to
18 wait for the response, then people want to reply.
19 And in the meantime, when there's 20 of them
20 pending, things get lost.

21 Some of these motions don't have responses.
22 Some of these motions literally aren't fully
23 briefed, even though they have been pending for a
24 period of time. And I'm not being critical of
25 anyone. I want to figure out a path forward. Some

1 of the most recent ones did have the joint
2 statement, which I very much appreciated,
3 Ms. Trzaskoma.

4 But the challenge that the Court is now
5 facing is it's like breadcrumbs in the docket trying
6 to figure out, kind of, what is what. And I wanted
7 to give the parties the opportunity to try to
8 resolve these issues through meet and confers, as
9 discussed at the September conference. Perhaps I
10 was cautiously optimistic that some progress could
11 be made, and unfortunately, that did not come to
12 pass. So here we are with a stack of motions to
13 decide, and we will decide them, but I need to give
14 people the opportunity to be heard.

15 And so that's, kind of, the timing problem
16 that is presented when people go and file a motion
17 without prior permission because I don't -- there's
18 no briefing schedule and I don't have the other
19 side's response, and then I have to order a
20 response, then I have to wait, and then you have to
21 reply. It takes way too much time. It ends up
22 eating up all the time in the world and wasting a
23 ton of resources.

24 So you look like you have some ideas,
25 Ms. Trzaskoma.

1 MS. TRZASKOMA: Well, I just want to -- I
2 want to explain that I think that part of the issue
3 here is that we served the initial subpoenas on the
4 AG's Office and the Assembly in the Southern
5 District of New York, and they did not -- and so we
6 started to enforce the subpoenas in the district in
7 which they were served, and that had to be by motion
8 to compel. We had to open a miscellaneous action.
9 We had to -- they consented to the transfer.

10 THE COURT: Those motions are different.

11 MS. TRZASKOMA: Well --

12 THE COURT: Those motions are materially
13 different than what I'm talking about.

14 MS. TRZASKOMA: But we had a -- we had a
15 similar situation, then, with Lindsey Boylan, and it
16 was not clear to us -- so we, now, are proceeding in
17 that way. And with respect to -- I think there's
18 only one motion that was -- that's almost fully
19 briefed, but not fully briefed.

20 So the Boylan motion is fully briefed.
21 Bennett issues fully briefed. Kaitlin is --
22 there's -- there are two -- there's a reply and then
23 a reply, which is also the other problem with the
24 motion because then there's a cross-motion to quash,
25 and then -- I mean -- so instead of, like --

1 THE COURT: Yes.

2 MS. TRZASKOMA: We don't want that either.
3 So I'm happy to proceed, but, you know, part of the
4 issue is some of these subpoenas were served in
5 other districts.

6 THE COURT: Oh, I'm fully aware of the
7 procedural history of 3044, 3027 and the Boylan
8 docket. I think it's 1547. So --

9 MS. TRZASKOMA: So I think we've gotten a
10 little bit of streamlining going on there. And I do
11 want to say with respect --

12 THE COURT: 87. 1587.

13 MS. TRZASKOMA: 1587. You're better than I
14 am.

15 The -- with respect to the requests and how
16 broad they are in terms of time period, I think one
17 of the -- we did not put a time period for some of
18 these because they're naturally bounded in time, in
19 terms of people didn't work in the executive chamber
20 for -- you know, there -- there's just a very short
21 period of time. These are not 20-year employees.

22 So I think they may, on their face, appear
23 somewhat broad, but I think they are very limited.
24 And, you know, they are narrowly tailored. And I
25 don't think -- I think the objections that we have

1 heard and that are in the briefing is -- they're
2 really two things: One, we're a nonparty. We don't
3 know Trooper 1. We never worked with Trooper 1. We
4 got nothing to do with Trooper 1. You shouldn't be
5 able to take discovery from us. Which, in my view,
6 is not a real objection -- or objection with any
7 merit. And two, I'm a nonparty and I'm not having
8 my legal fees paid, so I shouldn't have -- so it's
9 an undue burden.

10 But we haven't gotten, from anyone that I
11 can think of, an actual burden argument like,
12 this -- responding to this subpoena would require me
13 to hire a vendor and spend \$150,000 because I have
14 1.7 million potentially responsive e-mails.

15 I mean, we're talking about individuals
16 with their individual text messages and
17 communications. I mean, some -- you know, and some
18 people -- to Your Honor's point, there were
19 communications -- we've seen them. We've gotten
20 some of them, including in other litigation -- in
21 the other litigation -- where there are individuals
22 who, you know, on date X say, Governor Cuomo is the
23 best. I love him. Send him my best. I wish I
24 still worked with him. And then six months later,
25 they're saying -- they're complaining about him.

1 So those -- it's not too broad to ask for
2 everything that people -- you know, all their
3 communications about Governor Cuomo because there
4 are a lot of communications that reflect strong
5 affection and respect for him that, after all of
6 this happened are, you know, very different.

7 So -- and, you know, just on -- I did want
8 to be heard briefly on the subpoena for phone
9 records because Trooper 1, in her AG testimony,
10 under oath, told the Attorney General that she had
11 not talked about her -- the -- her allegations with
12 anyone. She said that under oath. We now know she
13 was, in fact, talking with people. And as we
14 submitted to Your Honor -- I'm sure you have the ECF
15 number offhand -- but the -- with our Nevins 189, we
16 now know because Steve Nevins produced them to us --
17 he was texting with Trooper 1 in real time. He was
18 communicating with her. They had phone calls, we
19 know.

20 So -- and we only learned that because we
21 subpoenaed Trooper Nevins. And I -- you know, we
22 also -- in response to interrogatories we served,
23 Trooper 1 said, I communicated with this list of 30
24 people about my communicate -- you know, about my
25 allegations, about my experience on the PSU and my

1 work with Governor Cuomo, my allegations.

2 We then asked for all of her communications
3 with those people, and the response was, that's too
4 broad. So we gave -- we tried to do this a
5 different way. And I do not know -- I don't have a
6 list, sitting here, of every person who Trooper 1
7 communicated with about Governor Cuomo or her
8 allegations during the investigation, after the
9 investigation. I don't have that list because I
10 don't have any confidence that we know the universe
11 or that we know how often they were talking.

12 Diane Parrotta told us she was best friends
13 with Trooper 1 and that they talked all the time.
14 They did produce texts where Trooper 1 -- where
15 Diane Parrotta was trying to communicate with
16 Trooper 1 at the end of May of this year, but what
17 they didn't tell you is that prior to those texts,
18 at the beginning of May, Trooper 1 and Diane
19 Parrotta had lunch together. We did not get any
20 communications about -- between Diane Parrotta and
21 Trooper 1, how they organized the lunch, whether
22 they had conversations after the lunch.

23 Like to the point of we don't have any
24 confidence, I would like to check --

25 THE COURT: What did Ms. Parrotta say was

1 how they set it up?

2 MS. TRZASKOMA: She could not recall. And
3 she deletes all her text messages. So I don't have
4 any confidence. I don't know. They probably --
5 maybe they had a phone call. Maybe they did it by
6 courier pigeon. I'm not sure. But I think the
7 phone records will go somewhere to helping us figure
8 out this puzzle, along with, the day before
9 Trooper 1 goes in, how long did she talk to Steve
10 Nevins? Did she talk to Diane Parrotta? Did she
11 talk to Mr. Plaskocinski? Did she talk -- who did
12 she talk to?

13 THE COURT: I mean, I think I've made my
14 determination that the relevancy has been
15 established. And this just affirms, you know, even
16 more so my conclusion, that the phone records are
17 relevant.

18 Mr. Licul, so what were you going to say?

19 MR. LICUL: I was going to say we gave them
20 those phone records. We gave them the phone records
21 of communications between Trooper 1 and
22 Ms. Parrotta, that -- and we added her to our
23 original discovery, you know, list, so there's
24 nothing we're trying to hide here.

25 As I understood, Your Honor was to be

1 asking a process question, I think.

2 THE COURT: Yes.

3 MR. LICUL: About how do we avoid motion --
4 I mean, if I may, Your Honor, I have an idea. I
5 don't know if it will work.

6 THE COURT: Go for it.

7 MR. LICUL: At least as far as the parties
8 go, I would not be opposed to having a rule for this
9 case, which is simply that the parties meet and
10 confer and submit a joint letter, and then, Judge,
11 Your Honor can decide it on that joint letter rather
12 than following up with a motion, with a formal
13 motion. I think it would streamline the process.
14 I'm -- I've seen it work in other cases and also
15 have some experience in -- on the chamber side and
16 the overwhelming docket hits that happen on ECF.
17 And just to have a --

18 THE COURT: It is real.

19 MR. LICUL: It can be overwhelming. I
20 know. I understand.

21 THE COURT: There's a lot. I mean, it's --
22 this is one case out of 400.

23 MR. LICUL: Yeah. No, I --

24 THE COURT: So, you know, the number of
25 filings is a real phenomenon around here.

1 MR. LICUL: I'm fully familiar with the
2 docket, especially in this courthouse. I totally
3 understand and sympathize.

4 MS. GLAVIN: Mr. Licul, are you referring
5 to your law clerk experience?

6 MR. LICUL: Yeah, I am. But all I'm saying
7 is I understand how that bounces -- how that bounces
8 here. And so all I was saying is one document might
9 help.

10 THE COURT: I'm not trying to out you, but
11 I'm guessing, like me, that you clerked before ECF.

12 MR. LICUL: No, no.

13 THE COURT: No? You clerked more recently?

14 MR. LICUL: ECF was a thing. We got the
15 bounces.

16 THE COURT: So I clerked before ECF.

17 MR. LICUL: Oh.

18 THE COURT: And I think ECF has lowered
19 the amount -- like, made it so much -- the bar is so
20 much lower --

21 MR. LICUL: The barrier to entry --

22 THE COURT: -- to filing things --

23 MR. LICUL: Yes.

24 THE COURT: -- that people just file
25 anything that comes into their head. It's amazing.

1 MR. LICUL: I would just suggest,
2 Your Honor, at least as far as the parties go --

3 THE COURT: People had to, like, bring the
4 document to the courthouse in the past.

5 MR. LICUL: In the snow.

6 THE COURT: Yeah, in the snow. Uphill both
7 ways.

8 MR. LICUL: Yeah. But just to have a --
9 just -- I mean, we could do it by letter, a joint
10 letter. We'll hash out our disputes, and if we
11 can't resolve them -- and, again, just doing it on
12 the letter may avoid some of the back and forth.

13 THE COURT: That could help. You know,
14 usually, of course, if there's a need for an actual
15 ruling as opposed to an advisory kind of "here's
16 what I would do if this were fully briefed"
17 discussion, I would need to seek the parties'
18 permission to convert to a motion.

19 So if you guys are willing to discuss this
20 option, I certainly think that could help streamline
21 things, because a lot of the delays in my being able
22 to react are the interrelatedness of the various
23 pending motions and the lack of being fully briefed.
24 Those two factors have created this snowball that we
25 now have, combined with wanting to give you time to

1 see if you could work things out in light of our
2 conversation of September.

3 MR. LICUL: I would just say, Your Honor,
4 that practicing both in this courthouse and in
5 others in the Second Circuit it's -- Your Honor
6 probably knows this, but it's common, without the
7 parties' consent, for the judges just to simply rule
8 on letters.

9 THE COURT: Yes.

10 MR. LICUL: Yeah.

11 THE COURT: Except the Second Circuit can
12 also reverse you for that. So, you know, it needs
13 to be done very carefully --

14 MR. LICUL: Fair.

15 THE COURT: -- depending on what kind of
16 motion it is, whether it's actually a motion.

17 MR. LICUL: Yeah. Fair.

18 THE COURT: Okay. Thank you, Mr. Licul.

19 So I think that our next steps here include
20 you guys meeting and conferring with regard to the
21 dates of the phone subpoenas. And, you know, I
22 really do hope that based on everything that we
23 discussed here today, the parties can reach a final
24 path forward on the phone subpoenas.

25 With regard to the non-party discovery, I

1 appreciate hearing more context from you,
2 Ms. Glavin, as to, sort of, your preferred order of
3 operations. You know, I have not decided fully that
4 all five of those depositions are necessary in
5 advance of Governor Cuomo's deposition.

6 I do understand your argument with regard
7 to Ms. Boylan and Ms. Bennett. I do hope to have
8 them on the calendar in the earliest date we could
9 fit them in, in January, which is January 11th, the
10 afternoon. So we will enter a scheduling order as
11 to those two parties for January 11th.

12 In the meantime, I recognize that the OAG
13 investigation issues are, to some degree, sort of,
14 the tail that's wagging the dog with regard to
15 certain aspects of the discovery in this case. And
16 I will be issuing an order to the Attorney General's
17 Office shortly with regard to certain documents that
18 I would like to review in camera.

19 And from there, you know, I do expect that
20 I would like to -- I want to get as much of the
21 party discovery done as we could possibly get done
22 before the depositions are taken by many of the
23 complainants. And so, you know please think about
24 your order of operations and a timeline for getting
25 those depositions done.

1 I don't think that the answer is after we
2 have the Attorney General documents in our hands,
3 because even if I were to rule in your favor on the
4 sovereign immunity issue, my, you know, prediction
5 is that that will not be the end of the story. So I
6 just don't think that these documents are going to
7 be landing on your desk at any point in the near
8 future.

9 MS. GLAVIN: If you ruled against us, I
10 don't think it would be the end of it. That's
11 exactly where we are.

12 All right. So, Judge, why don't we -- I
13 want to think about what you said about order of
14 operation in terms of the -- sort of, the five
15 depositions I clump together. I want to think about
16 that a little more and talk with Ms. Trzaskoma as
17 well, and also with our team, in terms of, you know,
18 what we would prioritize out of those five. And
19 then can we get back to you on that?

20 THE COURT: Yeah. How quickly can you get
21 back to me on that and also on the resolution -- I'm
22 going to call it a resolution of the phone records
23 issue?

24 MS. TRZASKOMA: I would hope within a week
25 we could -- I mean, we have depositions the next --

1 MR. LICUL: Yeah, I -- we just need the
2 dates, and then we have to actually go back and look
3 at the phone records. So --

4 MS. TRZASKOMA: We can get you the dates
5 tomorrow.

6 MR. LICUL: Okay.

7 THE COURT: Okay.

8 MR. LICUL: And then we'll let you know.
9 Perhaps that's something, Your Honor, we can discuss
10 at -- on January 11th.

11 THE COURT: I would like to know --

12 MR. LICUL: Before then?

13 THE COURT: -- before then because if we
14 actually -- if I have to review the phone records --
15 I mean, I just need to know where we are so that we
16 can figure out next steps.

17 MR. LICUL: Okay.

18 THE COURT: Putting it off a whole month
19 is just -- I know the holidays are in the interim
20 there, which is part of the reason the date is long.
21 It's a little too long to. I really want to get
22 these subpoenas out the door.

23 MR. LICUL: Okay. Your Honor, can we do
24 it -- well, if they get us the date -- the dates
25 tomorrow, we will then probably have to have a call

1 about those dates.

2 MS. GLAVIN: I look forward to it,
3 Mr. Licul.

4 THE COURT: Please also answer the question
5 for me, Ms. Glavin, as to whether or not Trooper 1's
6 records are sufficient to reflect all the
7 communications that you're interested in based on
8 what you know so far with her.

9 Obviously, I recognize that Ms. Parrotta's
10 communications with others may be a different issue.
11 Is Ms. Parrotta represented?

12 MS. TRZASKOMA: Yes.

13 MR. LICUL: That's a complicated story.
14 Ms. Parrotta believed she was represented by the
15 State Police's lawyers at her deposition, when in
16 fact, she wasn't.

17 THE COURT: I see. Okay.

18 MS. TRZASKOMA: I mean, she represented on
19 the record that she was represented by counsel,
20 so --

21 MS. GLAVIN: Yes.

22 MS. TRZASKOMA: -- if there was an issue --

23 MR. LICUL: Well, they -- but the folks --
24 she believed it was the State Police's lawyers, and
25 we've since learned that they did not represent her.

1 They just facilitated her deposition. And so --

2 MR. PALERMO: I wasn't present for that.

3 MS. GLAVIN: That's news to me.

4 MR. PALERMO: -- I don't know that we have
5 been representing people to the extent that it
6 involved, you know, allegations while they were
7 employed with the State Police. So we may have
8 represented her in that limited capacity during the
9 deposition. I would have to go back and confirm.

10 MR. LICUL: Okay. That's fair. I mean, I
11 actually -- I'm pretty sure there's an e-mail from
12 somebody. I'm not saying it was you. Somebody from
13 Harris Beach saying that they did not represent her;
14 that they just facilitated her deposition.

15 At one point during Ms. Parrotta's
16 testimony, she asked to speak to her lawyers and was
17 denied. She wanted to speak to her lawyers, I
18 think, about a privilege issue.

19 So, anyway, we're going a little bit far
20 afield.

21 MS. GLAVIN: What?

22 MS. TRZASKOMA: I don't think that's --

23 MR. LICUL: Yeah, she does -- she does ask.
24 Believe me. We've looked at this. Ms. Parrotta
25 believed that she was represented by the State

1 Police, and she was not.

2 THE COURT: Okay. That sounds like --

3 MR. LICUL: Yes.

4 THE COURT: -- something that requires a
5 little further inquiry.

6 So one other question that I have, and this
7 is for Ms. Foti. You've been so patient. You've
8 been here all afternoon.

9 MS. FOTI: Thank you.

10 THE COURT: What are we doing with the
11 motions that have been filed on behalf of DeRosa and
12 Azzopardi; what is the status of those?

13 MS. FOTI: Well, Your Honor, the --
14 Judge DeArcy Hall granted the motions, so --

15 THE COURT: No. I'm talking about the
16 discovery motions.

17 MS. FOTI: Oh, the discovery motions.
18 Well, I think I did write a letter earlier to
19 Your Honor that, given the fact that we believe
20 we've been dismissed and we expect that that will be
21 with prejudice, we have not pursued the discovery
22 motions.

23 What we have done in an attempt to -- not
24 to delay what has already been a long delay, is we
25 continue to participate in the current discovery

1 that Governor Cuomo is taking. A number of those
2 depositions would be depositions that we also would
3 request. We have not pursued the other -- our own
4 subpoenas. And we've talked to, for example,
5 Ms. Boylan's attorneys, Ms. Bennett's attorneys, and
6 said that we are holding off on that until we get
7 the decision from Judge Hall, DeArcy Hall.

8 I expected decision earlier than now. And
9 I understand she -- I don't know when it will come
10 out. She obviously has a lot on her plate. If you
11 believe we should continue to pursue our subpoenas
12 separately in order not to delay this further, we
13 will do so. I just -- I thought this was the best
14 way to go forward.

15 THE COURT: No, I don't disagree, that, you
16 know, sort of, like, just having them be. But not
17 pursuing them is a, sort of, sensible strategy in
18 the moment, especially given all of the other
19 discovery problems that we are experiencing in this
20 case.

21 My question is, sort of, almost like a
22 practical one, in terms of what, if anything, we
23 should do with them. I mean, is this a situation,
24 like, for example, you have a premotion conference
25 regarding the motion to quash the subpoena served on

1 Charlotte Bennett at ECF number 153.

2 Do you need to be included at the
3 conference for Charlotte Bennett on January 11th
4 with regard to being heard on that motion, or can
5 that motion be terminated as moot?

6 What do you want to do as a practical
7 matter?

8 MS. FOTI: Well, as a practical matter, I'm
9 not available January 11th. I actually was asking
10 my co-counsel if they could come, and I haven't
11 learned yet. I did not want to delay this.

12 I think we -- if we still -- are still in
13 the case, I will have someone appear. I do think we
14 should be included in that just because, again, if
15 we continue to be in the case going forward, we'd
16 obviously want to be heard and add our voice to
17 whatever -- you know, whatever the objections are.

18 THE COURT: Okay.

19 Mr. Licul?

20 MR. LICUL: Just on the -- no, I have
21 nothing further.

22 THE COURT: Okay. All right. You look
23 like you really wanted to say something.

24 So is there anything else I should be
25 thinking about with regard to your situation,

1 Ms. Foti, with regard to --

2 MS. FOTI: I just want to make sure that
3 it's clear that we're reserving our rights, you
4 know, to go forward with any discovery, if, in fact,
5 we are told we are not dismissed with prejudice.
6 You know, obviously, that will -- if we're not,
7 they -- I assume that's going to be in another
8 amended complaint, so that's going to be somewhere
9 down the road. And I don't know what that amended
10 complaint would look like.

11 THE COURT: I don't know.

12 MS. FOTI: Yeah, so --

13 THE COURT: It could turn on the basis for
14 the rationale of the decision.

15 MS. FOTI: Right.

16 THE COURT: And do you anticipate
17 amendments depending on --

18 MR. LICUL: I --

19 THE COURT: It's hard to -- impossible to
20 say.

21 MR. LICUL: Really, I couldn't say. I
22 don't know what -- depends on the ruling, I guess --

23 THE COURT: Right.

24 MR. LICUL: I was just going to say
25 something about the phone records that would be just

1 to Mr. Crain.

2 THE COURT: Sure.

3 MR. LICUL: We could -- if you get us the
4 dates tomorrow, we'll have a meet and confer if we
5 have any disagreements. And we'll send you -- we
6 can probably get the phone records to you by the end
7 of next week.

8 MS. TRZASKOMA: What are -- what -- I'm
9 not -- I don't understand.

10 THE COURT: These are her phone records.

11 MR. LICUL: Her phone records.

12 THE COURT: Trooper 1's.

13 MR. LICUL: So if you give -- my
14 understanding, Your Honor -- and correct me if I'm
15 wrong -- is that you will give us dates. We will
16 then take a look at the phone records. And to the
17 extent there is anything sensitive in those phone
18 records, any particularly sensitive communications,
19 we would then redact those, but -- and producing
20 everything else that's not sensitive.

21 THE COURT: That would be what I think is
22 fair.

23 MR. LICUL: That's my understanding of what
24 Your Honor has asked us to do.

25 THE COURT: Yes. And by "sensitive," we're

1 talking, you know, attorney-client, if she has --
2 going to the doctor, having nothing to do with this
3 case.

4 MR. LICUL: Correct. Right. Okay.

5 And then -- so we would produce --

6 MS. TRZASKOMA: With one caveat,
7 Your Honor. I mean, I think attorney-client -- the
8 phone records don't reveal a -- like, the substance
9 of a communication.

10 THE COURT: That's also irrelevant.

11 MS. TRZASKOMA: Well, it's relevant if
12 Trooper 1 -- when Trooper 1 started talking to a
13 lawyer --

14 THE COURT: Why?

15 MS. TRZASKOMA: -- about her claims.

16 THE COURT: Why?

17 MS. TRZASKOMA: Because it goes to whether
18 she was afraid to raise them. I don't know when she
19 first consulted with a lawyer.

20 MR. LICUL: I think this is pretty clear.

21 THE COURT: First of all, the scope of the
22 dates need to be clarified. And, you know, to the
23 extent that you have concerns about when Trooper 1
24 contacted an attorney, you can ask her that at
25 deposition.

1 MS. TRZASKOMA: Well, here -- just one
2 point, Your Honor.

3 Again, the substance of the communications
4 will not be revealed, but we -- based on the
5 discovery we have, we know that there were a small
6 group of plaintiff's lawyers very early on in this
7 case that included, not Mr. Licul, but his partner,
8 who were out there speaking with potential claimants
9 and urging people to come forward, and who were
10 acting -- and who were acting as, sort of,
11 intermediaries between and among the complainants.
12 And it is relevant to us if those attorneys were in
13 communication with Trooper 1 in this early time
14 period --

15 MR. LICUL: Your Honor, I --

16 MS. TRZASKOMA: -- and including through
17 the investigation.

18 For example, if Trooper 1 was speaking --
19 it is relevant whether she was in communication with
20 the lawyers who we know who were out there --

21 THE COURT: No, it's not relevant because
22 you're making assumptions about the content of the
23 communications.

24 MS. TRZASKOMA: The fact --

25 THE COURT: And you don't ever get to learn

1 them. So all it does is give you an argument that
2 would require her to waive attorney-client
3 privilege.

4 MS. TRZASKOMA: Well, we don't even know if
5 there was an attorney-client relationship.

6 MS. GLAVIN: Yeah.

7 THE COURT: This is fishing. I'm sorry.
8 I'm going to go back on my prior comment, and I'm
9 going to use the word myself.

10 MS. GLAVIN: We should -- Your Honor, on
11 this particular issue --

12 THE COURT: This is fishing.

13 MS. GLAVIN: Okay. But on this particular
14 issue, we have not raised this yet. It will likely
15 come up. It may come up in the Bennett lawsuit.
16 Just so you understand why we're raising this -- and
17 we know that, in December of 2020, Lindsey Boylan
18 was in touch with the Wigdor Law Firm and wanted to
19 put together a group of a number of other women.

20 And she then -- she also reached out to
21 Kaitlin in December of 2020 and said, will you
22 please talk to Wigdor? And, in our view, we don't
23 think that was a protected communication. We know
24 Kaitlin did.

25 We also know from Lindsey Boylan's

1 testimony that, in February of 2021, when she
2 published her Medium piece, she was in
3 communications -- and I think what she said in her
4 testimony is that her attorneys helped -- and I
5 don't know who her attorney was at the time -- draft
6 the essay.

7 Come March, when they announced there was
8 going to be an investigation, Charlotte Bennett is
9 in touch with other complainants and wanting them to
10 speak with Debra Katz. And, you know, we now have
11 seen communications just based on production in the
12 Bennett case, which I might add, Ms. Bennett's
13 lawyers will not give permission for us to use in
14 the (inaudible). But there are --

15 THE COURT: I'm fully aware. That's one of
16 the issues I'm going to be discussing with them on
17 January 11th.

18 MS. GLAVIN: I know. But in those
19 communications, there are communications between her
20 and Alyssa McGrath in early March of 2021. And you
21 have, you know, Ms. McGrath saying, you know, she
22 was great. Meeting Debra Katz was great. She's
23 going to put me in touch with a big-shot
24 discrimination lawyer.

25 That's where this is relevant. So we have,

1 now, seen this in the communications.

2 THE COURT: But the --

3 MS. GLAVIN: Your Honor, it goes to intent.
4 It goes to intent, and it goes to -- and one of the
5 things that we are exploring in the case, and will
6 be explored during depositions, not just in this
7 case, but in the Bennett case, is the role to which
8 plaintiff's attorneys in this were encouraging
9 people to come forward and telling them what to say,
10 what constituted this and that. People switched
11 lawyers.

12 THE COURT: But --

13 MR. LICUL: Your Honor --

14 THE COURT: Ms. Glavin, what you're trying
15 to do -- look, to the extent -- this is not a mob
16 lawyer situation, okay.

17 MS. GLAVIN: No. And I don't mean to
18 suggest that.

19 THE COURT: To the extent that plaintiff's
20 attorneys are informing potential litigants of their
21 rights and the remedies that may be available to
22 them based on experiences they have had, that is
23 perfectly appropriate and lawful and really
24 irrelevant to the trial and to any discovery that
25 you may seek to take.

1 Unless you have evidence that the
2 plaintiff's attorneys were actually telling people
3 what to say, your words, not mine, the transcript
4 will reflect it, that is a serious allegation. And,
5 you know, unless there's evidence of that, I don't
6 see the relevance.

7 MS. GLAVIN: Your Honor, with respect to
8 the -- when I say "telling people what to say," I
9 don't mean telling people to make stuff up and tell
10 lies. Absolutely not. And to the extent I
11 suggested that, I, you know, apologize. That's not
12 where I'm going with this.

13 It's to the extent that there was a group
14 of people who were also thinking about lawsuits
15 against the State, there's all types of motives
16 involved in this, and we want to be able to explore
17 that.

18 THE COURT: You can ask the witnesses, but
19 I don't know that that entitles you to have dates
20 and times of phone calls.

21 Mr. Licul?

22 MR. LICUL: I just -- this is the problem
23 with conspiracies. They tend to grow.

24 I can tell the Court, 100 percent, I know
25 the date that Trooper 1 -- that we were contacted

1 about Trooper 1. I don't want to reveal anything
2 that's privileged. I know the date. And I can say
3 that it was completely independent of any of -- and
4 I'm not agreeing with the allegations, but
5 independent of that altogether. And if the Court
6 wants, I can show the Court in camera the e-mail as
7 to how -- the genesis of Trooper 1 contact.

8 THE COURT: I am not interested --

9 MR. LICUL: Okay.

10 THE COURT: -- at this juncture based on
11 this discussion of opening the floodgates to a
12 discovery avenue regarding a group of plaintiffs'
13 attorneys who may or may not have been discussing
14 people's legal options with them. That is getting
15 very far afield and disproportionate.

16 MR. LICUL: Thank you, Your Honor.

17 THE COURT: So, you know, the redactions
18 that you can anticipate, Mr. Licul, that I think are
19 appropriate, would include the attorney-client
20 communications.

21 And is your client presenting any type of
22 medical evidence in this case, or --

23 MR. LICUL: She has.

24 THE COURT: -- therapist evidence?

25 MR. LICUL: She has, yeah.

1 THE COURT: The phone calls, that does not
2 seem relevant if she's on the phone with her
3 therapist. I mean, you're going to have any
4 treatment records.

5 MS. GLAVIN: Yes, that's fine.

6 THE COURT: Okay. So records of medical
7 treatment, therapy, phone calls; things along those
8 lines may be redacted.

9 MR. LICUL: Okay. And if there's another
10 category, we'll --

11 THE COURT: Try to work it out.

12 MR. LICUL: We'll try to work it out.
13 Believe me, there's a lot of stuff that we have
14 worked out.

15 MS. GLAVIN: There is.

16 THE COURT: I believe you. I believe you.

17 MS. GLAVIN: I will say, Your Honor, we
18 have a very good working relationship with
19 Mr. Licul.

20 MS. TRZASKOMA: We'd like to talk about all
21 the motions we didn't file.

22 THE COURT: You keep telling me that, but,
23 you know --

24 MS. GLAVIN: Surprise.

25 THE COURT: I recently had occasion to look

1 up the etymology of the phrase "the proof is in the
2 pudding." Very odd etymology. You should look it
3 up yourself. It's very entertaining.

4 I'm glad to hear that there is this
5 representation that you have this working
6 relationship, but the proof is in the pudding. So
7 now, go look it up.

8 MS. TRZASKOMA: That's why we should talk
9 about the motions not filed.

10 MS. GLAVIN: What we have not filed.

11 THE COURT: Fair enough.

12 One of the criteria that, you know, we look
13 at with regards to our pro bono assistance project
14 is the lawsuits not filed by the pro bono counsel
15 that they give to pro bono litigants who come to the
16 court and, you know, want to file things that just
17 don't state federal claims or belong across the
18 street. You know, so sometimes what didn't happen
19 is proof, too. I'll give you that.

20 All right. So we obviously have some
21 additional work to do. You have some additional
22 work to do. We will be issuing that scheduling
23 order I described, as well as, you know, I have some
24 documents I want to see from the Attorney General's
25 Office. And we'll see where that takes us.

1 Unless we have a reason to change the date
2 or parties are unavailable, we will hope to see you
3 all on January 11th to discuss the specific granular
4 issues relating to Ms. Bennett, Ms. Boylan. And
5 there may be additional docket activity between now
6 and then as we work through, you know, some of the
7 issues.

8 My anticipation is that, you know, my --
9 the general thinking on the non-parties, the
10 complainant non-parties, is that there are areas of
11 document discovery that are clearly relevant and
12 proportional and appropriate. The issue is finding
13 the right rider for each person.

14 And so, you know, what I anticipate doing
15 is issuing an order that addresses some of the
16 motions in part, neither granting them in part nor
17 denying them fully in part, you know, simply because
18 I haven't seen all of these riders that are out
19 there that are causing agita for people. And I
20 don't necessarily want to if the parties can reach a
21 resolution once I give a framework, which I am
22 prepared to do.

23 MS. TRZASKOMA: That will be helpful,
24 Your Honor.

25 MS. GLAVIN: Very.

1 THE COURT: Okay. So that way, the third
2 parties can understand, you know, sort of, how any
3 motion to quash would be received. And I do think
4 that the document discovery is the way to start with
5 the third parties. And we just need to get that
6 rolling and get some discoveries on the books --
7 some depositions, excuse me, on the books. And I do
8 agree with the third-party complainants, that some
9 of their depositions can wait until after Governor
10 Cuomo. Okay.

11 MS. GLAVIN: Thank you, Your Honor.

12 MS. TRZASKOMA: Thank you.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of Trooper 1 v. New York State Police, et al.; Docket Number: 22CV0893 was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Adrienne M. Mignano
ADRIENNE M. MIGNANO, RPR

Date: December 14, 2023